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Supreme Court, U.S.
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No.

In The

Supreme Court of the United States

October Term, 1999

FRANK JOSEPH SEDDIO, JR.

Petitioner,

V.

LYN MICHAELS,

Respondent.

On Petition For Writ Of Certiorari
To The Court of Appeals
For The Second District Of Texas
Fort Worth, Texas

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Do state courts have authority under the federal Uniformed Services Former Spouses' Protection Act, 10 U.S.C. § 1408, as interpreted in *Mansell v. Mansell*, 490 U.S. 561 (1989), to enforce an agreed divorce decree provision which awards the former spouse a sum certain when that sum is based in part upon retired pay that the retiree subsequently waives to receive veterans disability benefits?

If a military retiree waives his retired pay to receive a VA disability benefit after a divorce, does a state court have authority under the federal Uniformed Services Former Spouses' Protection Act, 10 U.S.C. § 1408, as interpreted in *Mansell v. Mansell*, 490 U.S. 561 (1989), to enforce an agreed divorce decree provision which awards the former spouse a sum that is based in part upon the amount the retiree waived if the divorce decree contains a general indemnification against undisclosed debts or obligations?

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FRANK JOSEPH SEDDIO, JR.

Petitioner,

v.

LYN MICHAELS,

Respondent.

PETITION FOR WRIT OF CERTIORARI

Petitioner Frank Joseph Seddio, Jr. ("Frank") respectfully requests that this Court grant its writ of certiorari to review the judgment of the Texas Court of Appeals for the Second District of Texas in Forth Worth issued in favor of Lyn Michaels ("Lyn") on August 28, 1998. That court's opinion was not published.

JURISDICTION

The court of appeals' judgment was entered on August 28, 1998. The court of appeals denied Frank's motion for rehearing on October 15, 1998. The Supreme Court of Texas denied Frank's Petition for Review on November 18, 1999, making the court of appeals the highest court of Texas in which a decision on the merits could be had. This Court has jurisdiction to review this case by certiorari under 28 U.S.C.§ 1257 in that Frank asserts rights under 10 U.S.C. § 1408, the Uniformed Services Former Souses' Protection Act ("USFSPA"), and 38 U.S.C. § 5301.

STATUTES INVOLVED IN CASE

Due to their length, the full text of 10 U.S.C. § 1408, 38 U.S.C. § 5301, and 38 U.S.C. § 5304 are set out in the appendix. The most pertinent portions of these statutes and the full text of 38 U.S.C. § 5305 are set out below.

10 U.S.C. § 1408

(a) Definitions. In this section:

(4) The term "disposable retired pay" means the total monthly retired pay to which a member is entitled less amounts which—

...

(B) are deducted from the retired pay of such member as a result of forfeitures of retired pay ordered by a court-martial or as a result of a waiver of retired pay required by law in order to receive compensation under title 5 or title 38; ....

(c) Authority for court to treat retired pay as property of the member and spouse. (1) Subject to the limitations of this section, a court may treat disposable retired pay payable to a member for pay periods beginning after June 25, 1981, either as property solely of the member or as property of the member and his spouse in accordance with the law of the jurisdiction of such court....

(e) Limitations. (1) The total amount of disposable retired pay of a member payable under all court orders pursuant to subsection (c) may not exceed 50 percent of such disposable retired pay.

38 U.S.C. § 5301

(a) Payments of benefits due or to become due under any law administered by the Secretary shall not be assignable except to the extent specifically authorized by law....

38 U.S.C. § 5305

Any person who is receiving pay pursuant to any provision of law providing retired or retirement pay to persons in the Armed Forces, or as a commissioned officer of the National Oceanic and Atmospheric Administration or of the Public Health Service, and who would be eligible to receive pension or compensation under the laws administered by the Secretary if such person were not receiving such retired or retirement pay, shall be entitled to receive such pension or compensation upon the filing by such person with the department by which such retired or retirement pay is paid of a

waiver of so much of such person's retired or retirement as is equal in amount to such pension or compensation. To prevent duplication of payments, the department with which any such waiver is filed shall notify the Secretary of the receipt of such waiver, the amount waived, and the effective date of the reduction in retired or retirement pay.

STATEMENT OF THE CASE

Frank and Lyn were divorced by an agreed final judgment and decree of divorce ("divorce decree") on February 19, 1991. (CR 2; Appendix 1a *et seq.*) At the time of the divorce, Frank had recently retired from the United States Air Force as a master sergeant with 20 years of service. With respect to a division of Frank's military retired pay, the divorce decree awarded Lyn

> a monthly amount of money equal to fifty (50%) per cent of that monthly amount a retired Master Sergeant with twenty (20) years' [sic] of service will receive from the date FRANK JOSEPH SEDDIO, JR. begins receiving his retirement, together with the same percentage of any and all cost-of–living-related increases to which FRANK JOSEPH SEDDIO, JR. shall become entitled....

(CR 11; Appendix 8a.) The divorce decree also contained a QUARDO directing the Secretary of the Air Force or his designee to pay Lyn directly her interest in Frank's disposable retired pay. The divorce decree then stated:

> It is the Court's intention that, if that dollar amount or "award" (or a larger sum as increases take effect) exceeds fifty (50%) per cent of the disposable retired or retainer pay, the Secretary of the Airforce [sic], or his designated agent, shall pay to LYN [MICHAELS] the maximum amount allowable under the Uniformed Services Former Spouses' Protection Act, and that FRANK JOSEPH SEDDIO, JR. shall be responsible for paying the balance of the award each month to LYN [MICHAELS] ....

(CR 12; Appendix 10a.)

At the time of the divorce, Frank was receiving $76 per month in Air Force disability benefits, which were deducted from his gross monthly retired pay of $888. (CR 19, Appendix 18a; Movant's Exhibit 1.) Four years later the Department of Veterans' Affairs ("VA") granted Frank VA disability benefits, which it has subsequently increased. In accordance with the USFSPA, the Defense Finance and Accounting Service deducted Frank's disability benefits before sending Lyn 50% of frank's disposable retired pay. The VA disability adjustments resulted in Lyn's monthly USFSPA payments dropping from $453 to $164.50 in September 1995 and to $61.50 in March 1996. (Movant's Exhibit 1.)

In 1996 Lyn filed a motion to enforce provisions of the divorce decree. (CR 42.) Frank raised the federal question sought to be reviewed when he responded to the motion. He contended that the divorce decree was void to the extent (1) that it calculated the amount of military pay due to Lyn without regard to Frank's disposable retired pay, as required by the USFSPA and (2) that it required Frank to pay money received from VA disability benefits or the amount of retired pay he had to waive to receive such benefits. (CR 71.) At the hearing, Frank argued that this Court's opinion in *Mansell v. Mansell*, 490 U.S. 581 (1989) controlled this case. Frank further argued that under *Mansell* the state court had no jurisdiction over his VA disability benefits or the portions of his retired pay that he had to waive to obtain the VA disability benefits. (RR 45-47.)

On September 9, 1997 the district court issued an order granting Lyn's motion for enforcement and awarding her $9,347.66 for unpaid retirement payments plus attorneys' fees. (CR 118; Appendix 31a.) The trial court made findings of fact and conclusions of law in which it held that it had the authority to enforce property settlement agreements that involve military retirement and disability benefits. It distinguished *Mansell* on the grounds that it did not decide the issue of whether a state court may enforce an agreement between the parties even if it involves payment from disability benefits. (CR 127; Appendix 36a.)

Frank appealed to the court of appeals. That court affirmed the trail court's order on August 28, 1998. (Appendix 37a.) In its

opinion, the court of appeals acknowledged that *Mansell* also involved a property settlement by the parties with court approval. However, it held that *Mansell* did not control because this divorce decree awards Lyn a "sum certain" that is unaffected by Frank's decision to waive retirement pay in favor of disability pay. It also justified its decision on the grounds that the divorce decree contained an indemnification clause that ensures reimbursement or satisfaction upon the entry of a judgment against one of the parties arising from the agreement. (Appendix 42a.)

Frank filed a petition for review by the Texas Supreme Court. Although it directed briefs on the merits, the Texas Supreme Court denied the petition without opinion on November 18, 1999. The Texas court of appeals is therefore the highest court in Texas in which a decision could be had. *See* 28 U.S.C. § 1257.

REASONS FOR GRANTING THE WRIT

1. The court of appeals has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Congress adopted the Uniformed Services Former Spouses' Protection Act ("USFSPA"), 10 U.S.C. § 1408, in direct response to this Court's decision in *McCarty* that states could not treat military retired pay as community property. *McCarty v. McCarty*, 453 U.S. 210, 101 S.Ct. 2728, 69 L.Ed.2d 589 (1981). Thereafter, various courts divided as to whether the USFSPA restored to the state courts all pre-*McCarty* authority.

This Court considered this contention in *Mansell v. Mansell*, 490 U.S. 581, 109 S.Ct. 2023, 104 L.Ed.2d 675 (1989). The Court specifically addressed whether under the USFSPA a state court may treat as property divisible upon divorce military retired pay waived by the retiree in order to receive veterans' disability pay. 490 U.S. at 583, 109 S.Ct. at 2025. The Court began by noting that Congress could overcome *McCarty* only by enacting an affirmative grant of

power to the states to treat military retired pay as community property because under *McCarty* the pre-existing federal law completely pre-empted the application of state community property law to military retired pay. 490 U.S. at 588, 109 S.Ct. at 2028. The Court held that under the specific language of the statute:

> [S]tate courts have been granted the authority to treat disposable retired pay as community property; they have *not* been granted the authority to treat total retired pay as community property.

490 U.S. at 591, 109 S.Ct. at 2029 (emphasis added).

In considering Mrs. Mansell's arguments attempting to overcome the limiting language, the Court found that Congress intended to create both new benefits for former spouses and to place limits on state courts designed to protect military retirees. 490 U.S. at 594, 109 S.Ct. at 2031. It concluded:

> [T]he Former Spouses' Protection Act does not grant state courts the power to treat as property divisible upon divorce military retirement pay that has been waive to receive veterans' disability benefits.

490 U.S. at 594-95, 109 S.Ct. at 2032. Congress has not changed these provisions of the USFSPA since *Mansell*.

In this case, the divorce decree purported to award the former spouse:

> a monthly amount of money equal to fifty (50%) per cent of that monthly amount that a retired Master Sergeant, with twenty (20) years' [sic] of service will receive on the date [Frank] begins to receive his retirement.

(CR 11; Appendix 8a.) The Texas court of appeals held that this award does not violate *Mansell* because it "awards a sum certain that is unaffected by Frank's decision to waive retirement pay in favor of VA disability pay." (Appendix 42a.) The court of appeals further explained:

> In other words, the property settlement effectively renders Frank's waiver irrelevant for purposes of the amount due Lyn because the parties contracted to tie the award to the amount "a retired Master Sergeant, with twenty (2) years' [sic] of service" would receive, not the amount that Frank actually received....
>
> Although we recognize that *Mansell* also involved a property settlement entered into by the parties prior to court approval, we believe that the case at hand is distinguishable because of this unique agreement. Whereas the Mansells' agreement expressly divided Gerald's VA disability benefits in contravention of the Act, Frank and Lyn merely contracted to divide a definite amount, irrespective of ancillary or subsequent occurrences such as we have here.

(Appendix 42a)

The court of appeals' distinction of this award from that in *Mansell* is a distinction without a real difference. This Court described the Mansells' property settlement agreement as providing that:

> Major Mansell would pay Mrs. Mansell 50 percent of his total military retirement pay, including that portion of retirement pay waived so that Major Mansell could receive disability benefits.

490 U.S. at 567, 109 S.Ct. at 2027. In this case Frank is to pay Lyn 50% of the retired pay of a master sergeant with 20 years service, which is Frank's total retired pay including that portion he has waived so that he can receive disability benefits. In short, Frank and Lyn's property settlement agreement just uses different words to describe the same agreement considered by this Court in *Mansell*. Therefore, according to the Texas court of appeals, a state court can ignore any restrictions imposed upon it by the USFSPA as interpreted by *Mansell* by the simple expedient of describing the service member's total retired pay in terms of his or her rank and years of service.

There is a second possible interpretation of the analysis of the court of appeals. That is that *Mansell* concerned VA disability benefits that existed at the time of the divorce while this case concerns a subsequent waiver of retired pay to receive VA disability benefits. (This view would be consistent with Lyn's actions because she has not sought compensation for the $76 per month that Frank was receiving as an Air Force disability benefit at the time of the divorce and that was awarded to him in the divorce decree. [CR 19, Appendix 18a.]) In other words, a state court can fix as of the date of the divorce decree, a former spouse's entitlements with respect to the member's total retired pay limited only by the deductions required by the definition of disposable retired pay that exist on that date. This analysis by Texas court of appeals is inconsistent with this Court's analysis in *Mansell* and the language of the USFSPA.

The USFSPA authorizes state courts to treat only "disposable retired pay" as property of the retiree and the former spouse. 10 U.S.C. § 1408(c). The USFSPA does not fix disposable retired pay to a specific date. The act defines "disposable retired pay" as "the total *monthly* retired pay to which a member is entitled less" certain amounts. 10 U.S.C. § 1408(A)(4) (emphasis added). The act speaks in terms of monthly pay. A retiree's disposable retired pay is not fixed

in time but instead is subject to change from month to month. Furthermore, the act limits the "total amount of disposable retired pay" that a member has to pay under "*all court orders*" to a maximum of 50% of "such disposable retired pay." 10 U.S.C. § 1408(e)(1). Therefore, the USFSPA addresses the situation of serial marriages and divorces. If the amount excluded in the definition of disposable retired pay were fixed on the date of divorce, there would be the likelihood amounts excluded and therefore the amount of the disposable retired pay would differ for each divorce.

For example, suppose that service member Smith is divorced from Wife A after 10 years of both service and marriage, and marries B. Smith retires after 20 years of service and is awarded a VA disability benefit. Two years later Smith and B are divorced. Under the analysis of the court of appeals, Smith's disposable retired pay for the purposes of the first divorce would include the amount Smith waives to receive his VA disability benefits while his disposable retired pay for the purposes of the second divorce would exclude the amount he waived to receive the VA disability benefits. In short, Smith would have two different "disposable retired pays" at the same time. The language of the USFSPA does not accommodate such a result. Instead, subsection (e) clearly envisions one definitive "disposable retired pay" to apply to multiple divorces. This result requires that a member's "disposable retired pay" be determined month-to-month based upon those amounts that are to be deducted under subsection (a)(4) that month. In short, the USFSPA does not give the state courts the power to freeze the disposable retired pay as it pertains to the former spouse's interest.

The Texas court of appeals had a second rationale for holding that the divorce decree did not violate *Mansell*. That rationale was that the divorce decree contained an indemnification clause to protect the parties and which did not specify the source of the amounts due. (Appendix 42a)

In the indemnification clause Frank and Lyn warranted to each other that they had not incurred any debt, obligation or liability not disclosed in the agreement. Each party agreed that if any claim, action or proceeding were initiated against the other party for the first party's debt, obligation or liability, the first party would defend and indemnify the other party. (CR 29, Appendix 25a.) The indemnification clause does not refer to the division of Frank's retired pay either directly or indirectly. Frank's waiver of all or a part of his retired pay to receive VA disability benefits is not a claim, action or proceeding initiated against Lyn to hold her liable for debts, obligations or liabilities of Frank.

Neither of the Texas court of appeals' explanations justifies that court's refusal to follow this Court's interpretation of the USFSPA in *Mansell*. This case represents a blatant disregard of Congress's intentions as expressed in the USFSPA, this Court's interpretation of federal law in *Mansell*, and the supremacy clause of the United States Constitution.

2. This case is part of a growing trend of state courts' ignoring the limitations imposed upon their power under the USFSPA, as interpreted in *Mansell*.

It would be an understatement to say that *McCarty* displeased many state courts by limiting their prerogative to divide military retired pay in divorce proceedings. As a result, many state courts ignored the statutory limitations in the USFSPA and interpreted it to return to the states total authority to divide military retired pay, as in the pre-*McCarty* era. Gilbert, *A Family Law Practitioner's Road Map to the Uniformed Services Former Spouses Protection Act*, 32 Santa Clara L. Rev. 61, 74 (1992). That commentator thought that after *Mansell* state courts would find it very difficult to deviate from the strict definition of disposable retired pay.

Gilbert, *Id.* at 80 n. 96. However, many state courts are undeterred in their efforts to thwart any limitations upon their power to divide gross retirement pay. Fenton, *Uniformed Services Former Spouses' Protection Act and Veterans' Disability and Dual Compensation Act Awards*, Feb. 1998 Army Law. 31 (1998). There is a growing trend to ensure that former spouses' property interests are protected in the event of a future award of VA disability benefits or federal employment. *Id.* at 33. In fact, according to Major Fenton a *majority of courts* take some type of equitable action to compensate the former spouse when a reduction in disposable retired pay occurs. *Id.* at 32. According to a California court of appeals this practice is nearly universal. *In re Krempin*, 70 Cal. App.4th 1008, 83 Cal.Rptr.2d 134, 139 (Cal. App. 1999).

Some courts limit *Mansell* to its facts -- Major Mansell was already receiving disability benefits; therefore the division in that case violated the USFSPA. Those courts claim the power to quantify with certainty the former spouse's interest in the member's retired pay, which the member is not permitted to frustrate by subsequently voluntarily waiving retired pay. E.g. *Abernethy v. Fishkin*, 699 So.2d 235, 239-40 (Fla. 1997); *In re Marriage of Gaddis*, 191 Ariz. 467, 957 P.2d 1010, 1013 (Ariz. App. 1997). This approach is essentially that taken in this case

In other cases, courts have enforced judgments which provided that the military spouse could take no action to diminish his or her retired pay, and would indemnify the non-military spouse for any such diminution. E.g., *Abernethy v. Fishkin, supra*, 699 So.2d at 239-40; *Owen v. Owen*, 14 Va. App. 623, 419 S.E.2d 267, 269-71 (1992). Some courts have taken the same approach even without an express indemnity agreement. E.g., *McHugh v. McHugh*, 124 Idaho 543, 861 P.2d 113, 115 (1993).

Still other courts have held that the waiver of retirement pay with a reduction in pension payments to the non-military spouse was a change in circumstances, which permitted redistribution of marital property or reassessment of support payments. E.g., *In re Marriage of* Jennings, 138 Wash. 612, 980 P.2d 1248, 1254-55 (1999); *Kramer v. Kramer*, 252 Neb. 526, 567 N.W.2d 100, 113 (1997); *Clauson v. Clauson*, 831 P.2d 1257, 1261-64 (Alaska 1992).

Yet another court has held that if the military retiree waives retired pay to receive disability benefits, the state courts have the equitable power to impose a resulting trust on the money received as disability payments. *In re Marriage of Krempin, supra*, 83 Cal.Rptr.2d at 143.

While these state courts take different approaches, each is intent upon making an end run around *Mansell.* The common thread in these and other similar cases is the central concept that the nonmilitary former spouse has immutable interest in the military retiree's retired pay that can be fixed at the time of divorce, which the retiree should not and will not be permitted to affect. As shown above, this concept is not in accord with the specific language of the USFSPA and the related statutes. Whether this should be so is a matter for Congress, not the state courts.

A state court may be able to fix a former spouses' percentage of interest in the member's monthly disposable retired pay, but that is all. (If the parties divorce while the member is still on active duty, the court cannot fix the former spouse's percentage; instead, the court sets a formula to calculate the former spouse's interest when the member does retire.) Similarly, state courts cannot prohibit service members from applying for or accepting benefits provided by federal law without frustrating the federal law. In addition, the concept of offsetting the retiree's disability pay with other assets would also upset the balance that Congress has elected.

See Hisquierdo v. Hisquierdo, 439 U.S. 572, 588, 99 S.Ct. 802, 811, 59 L.Ed.2d 1 (1979).

3. Under the analysis of the court of appeals, service members on active duty are not protected by the USFSPA's exclusions for disability benefits.

The crux of the analysis of the Texas court of appeals and the other courts cited above is that only those subsection (a)(4) exclusions that actually exist on the date of the divorce decree are excluded from the state court's division of property upon divorce. Such analysis particularly impacts active duty military personnel. A service member will not receive disability benefits from either the member's service component or VA until after the member retires. Therefore, a member who is divorced while on active duty will be denied the application of subsections (a)(4)(B) & (C) in these states.

As of 1995 (the most recent year shown), there are approximately 1.5 million military personnel on active duty. STATISTICAL ABSTRACT OF THE UNITED STATES 1998, Table No. 580. The provisional divorce rate in 1996 was 4.3 per 1,000 population. *Id.*, Table No. 156. Applying this average divorce rate to the number of active duty personnel, one would expect about 6,450 divorces each year involving active duty military personnel. (According to an article in the Army Times, men who serve in the military are 69% more likely to get divorced by the time they reach 24. Army Times, Aug. 9, 1995.) If Major Fenton is correct, a majority of state courts would hold that *Mansell* provides no protection as to future disability pay for these service members. Feb. 1998 Army Law. at 32. The language of the USFSPA does not suggest that Congress intended that these provisions not apply to members on active duty at the time of a divorce.

4. Unless this Court acts to correct this situation, it is likely to get worse.

This trend of state courts evading the specific language of the USFSPA and the teaching of this Court in *Mansell* is not likely to abate. Indeed, there is some suggestion that it would be malpractice for lawyers representing former spouses not to assert these various approaches to evade *Mansell*. *See In re Krempin*, *supra*, 70 Cal.Rptr.2d. at 142; Sullivan, *Military Pension Division: Crossing the Minefield*, 31 Fam.L.Q. 19, 20, 27 (1997); Block, *Reduction in Disposable Retired Pay Triggered by Receipt of VA Disability Pay: a Basis for Reopening a Judgment of Divorce?*, Oct. 1995 Army Law. 28 (1995).

CONCLUSION

The Defense Finance and Accounting Service has informed counsel for Petitioner that it paid 52,569 former spouses in January, 1999 and 57,056 former spouses in January, 2000. (Appendix 47a.) The proper interpretation of the USFSPA affects over a million people. Service members, Active, Reserve, National Guard and Retired, are entitled to a uniform interpretation of the USFSPA throughout the United States. Members should not be denied the protections provided by the act because courts in their states are more interested in promoting the power of the state courts rather than applying the USFSPA as written and interpreted by this Court.

The Texas court of appeals has basically ignored the specific language of the USFSPA and this Court's interpretation of the USFSPA in *Mansell*; its purported distinctions blink reality. The Texas Supreme Court has refused to require the court of appeals to follow *Mansell*. Unless this Court acts to clarify the limits of power that Congress has imposed upon the states in the USFSPA, *Mansell* will be rendered virtually meaningless and state

courts in Texas and other states will continue ignoring the limitations Congress imposed upon the powers it granted them in the USFSPA.

For these reasons, the Court should grant its writ of certiorari to the Court of Appeals for the Second District of Texas at Fort Worth.

Respectfully submitted,

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APPENDIX

CAUSE OF ACTION NO. 89-3400-158

IN THE MATTER OF	X	IN THE DISTRICT COURT
THE MARRIAGE OF:	X	
	X	
LYN LARAINE (OTT)	X	
SEDDIO PETITIONER	X	158TH JUDICIAL DISTRICT
	X	
AND	X	
	X	
FRANK JOSEPH SEDDIO	X	
JR., RESPONDENT	X	DENTON COUNTY, TEXAS

AGREED
FINAL JUDGMENT AND DECREE OF DIVORCE
AND
BINDING CONTRACTUAL PROPERTY SETTLEMENT
AGREEMENT OF THE PARTIES

---BE IT REMEMBERED BY ALL PERSONS---

DATE OF HEARING AND FINAL TRIAL

On the 19th day of February, A. D., 1991, the above styled and numbered Cause of Action came on for Final Hearing before this Court.

APPEARANCES OF THE PARTIES AND ATTORNEYS

Petitioner and Cross Respondent, LYN LARAINE (OTT) SEDDIO, D.O.B. 09 January, A.D. 1945,Social Security Number: 110-34-9213, 734 Red Wing Drive, Lewisville, Denton County, Texas, 75067, and/or Army And Airforce Exchange Service, 3911 South Walton Walker Boulevard, Post Office Box No. 660202, Dallas, Dallas County, Texas, 75266-0202 AD-P/T, Residence Telephone No: (214) 780-3329, currently employed with Army Airforce Exchanges Services, 3911 South Walton Walker Boulevard, Post Office Box No. 660202, Dallas, Dallas County, Texas, 75266-0202 AD-P/T, Texas Driver's License No. 12578050, appeared in person and by and through her Attorneys of Record, the Hon. Randall A. Antonson, P.C., Randall A. Antonson, Esq. T.B.N.

01275500, Attorneys and Counselors At Law, 619 Mercury Place, Suite 107, Duncanville, Dallas County, Texas, 75137, Telephone No. (214) 298-6925-9951, and announced Ready For Trial.

Respondent and Cross-Petitioner, FRANK JOSEPH SEDDIO, JR., D.O.B. 10 July, A.D., 1942, Social Security Number: 092-32-7912, 734 Red Wing Drive, Lewisville, Denton County, Texas, 75067, Residence Telephone No. (214) 436-5117, currently employed with Electronic Data Systems, Dallas, Texas Drivers License No. 10785281, appeared in person and by and through his Attorneys of Record, the Hon. Richard S.Podgorski, T.B.N. 16082500. 326 B, East McKinney Street, Post Office Box No. 2494, Denton, Denton County, Texas, 76201-2, Telephone No. (817) 387-3869-3961,and announced Ready For Trial.

RECORD OF TESTIMONY

The record of testimony was duly recorded by regularly assigned Court Reporting Personnel, assigned to the 158th Judicial District Court, in and for Denton County, Texas, _____, C.S.R.

JURISDICTION AND DOMICILE

The Court finds that the pleadings of Petitioner and Respondent are in due form and contain all of the necessary allegations, information and prerequisites required by Law. The Court, after receiving further evidence, finds that it has Jurisdiction over this Cause of Action and the Parties and that at least sixty (60) days have elapsed since the date this Cause of Action was originally filed. The Court finds further that Petitioner and Respondent have both been domiciliaries of the State of Texas for at least a six-month (6 MO.) period preceding the filing of this Cause of Action, and further, both have been residents of the County of Denton, Texas, the County in which this Cause of Action is filed for at least a ninety (90) day period preceding the filing of this Cause of Action.

The Court finds further that any and all necessary Parties are before the Court, and that any and all persons entitled to Citation and Notice have been properly Cited and Noticed.

WAIVER OF JURY BY PARTIES

The Parties, after due consideration and consolation with the Parties' respective Attorneys of Record, and/or after being fully informed of each Party's Constitutional Right to have this Cause of Action presented before, and tried in its entirety to a Jury consisting of twelve (12) impartial persons, duly waived and consented to the Waiver of Trial By Jury in the above styled and numbered Cause of Action, and any and all matters, including any and all questions of fact and of Law were duly submitted to the Court for its consideration determination.

AGREEMENT OF THE PARTIES

The Parties, Petitioner, LYN LARAINE (OTT) SEDDIO, and Respondent, FRANK JOSEPH SEDDIO, JR., have stipulated and consented to the terms of this "Final Judgment And Decree of Divorce" and have consented to its entry in the Minutes of this Court as properly reflective of this Court's determinations, findings, rulings and Orders, upon the conclusion of Trial and/or Agreement of all material matters herein.

GRANTING OF DIVORCE BY COURT

IT IS THEREFORE, ORDERED, ADJUDGED and DECREED that Petitioner, LYN LARAINE (OTT) SEDDIO, and Respondent, FRANK JOSEPH SEDDIO, JR., be and they are hereby DIVORCED and that the Marriage and Marriage Relationship between them is forever dissolved on the ground of Insupportability, with both Parties, upon entry hereof, being restored to the status of "Single Persons", for all purposes.

MINOR CHILD-CHILDREN DEFINED

As used herein, the terms, "Child", "Children", shall include all persons under the age of eighteen (18) years, as of the date of the filing of this Original Cause of Action, and the masculine shall include the feminine, and the singular shall include the plural, and the terms may be interchangeable, as necessary.

NO MINOR CHILD OF THE MARRIAGE

This Court specifically finds further that no Minor Child, currently under the age of eighteen (18) years, has been born to the Marriage and/or Marriage Relationship by and between Petitioner and Respondent; that no Minor Child, currently under the age of eighteen (18) years, has been adopted by the Parties hereto, during

the existence of the Marriage and Marriage Relationship by and between Petitioner and Respondent; and that the Parties are not now expecting a Child, by virtue of the Marriage and Marriage Relationship of Petitioner and Respondent, the Parties hereto.

DIVISION OF MARITAL ESTATE OF THE PARTIES

The Court finds that the following is a just and right division of the Parties' marital Estate, having due regard for the rights of each Party to the Marriage.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that the Estate of the Parties is divided as follows:

PROPERTY TO PETITIONER

Petitioner, LYN LARAINE (OTT) SEDDIO, is awarded the following as Petitioner is sole and separate property, and further certain "Separate Properties" and "Separate Estates" and/or portions thereof, are hereby confirmed unto Petitioner, - LYN LARAINE (OTT) SEDDIO, and Respondent. FRANK JOSEPH SEDDIO, JR., is divested of any and all right, title, interest and claim in and to such property, and by these presents, the said FRANK JOSEPH SEDDIOP JR., does hereby trade, transfer, convey, grant confirm, affirm, consign and assign unto LYN LARAINE (OTT) SEDDIO, the following real and personal property:

Nothing contained immediately above in this paragraph is to be construed for any purpose, as a taxable event, either for Petitioner or for Respondent, and it is the express intention of the Parties, that the above represents a present division, assignment and transfer of presently owned Community property, and is not for any purposes to be construed by any person as a sale and otherwise taxable event.

REAL PROPERTY AND ESTATE

THE SUM CERTAIN, IN CASH, OF THREE THOUSAND AND NO/100—($3,000-00) — DOLLARS. WHICH SUM CERTAIN REPRESENTS ONE HUNDRED PER CENT (100%) OF PETITIONER, LYN LARAINE (OTT) SEDDIO'S COMMUNITY PROPERTY INTEREST, IN AND TO ALL OF THAT CERTAIN LOT, TRACT AND/OR PARCEL OF LAND AND ESTATE,

TOGETHER WITH ANY AND ALL APPURTENANCES THERETO, IMPROVEMENTS LOCATED THEREON, AND HEREDITAMENTS THERETO IN ANYWISE BELONGING, BEING COMMONLY DESCRIBED AND KNOWN AS 734 RED WING DRIVE, LEWISVILLE, DENTON COUNTY, TEXAS, 75067, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL OF THAT CERTAIN LOT, TRACT AND/OR PARCEL OF LAND, TOGETHER WITH ANY AND ALL APPURTENANCES THERETO, IMPROVEMENTS LOCATED THEREON AND HEREDITAMENTS THERETO IN ANYWISE BELONGING, IN THE CITY OF LEWISVILLE, DENTON COUNTY, TEXAS, 75067, BEING FURTHER DESCRIBED ASLOT: 1, BLOCK: "E", OF PHASE "A" TIMBERBROOK ADDITION NO. 4, AN ADDITION TO THE CITY OF LEWISVILLE, DENTON COUNTY, TEXAS, 75067, ACCORDING TO THE MAP AND PLAT RECORDS THEREOF DULY RECORDED IN THE MAP AND PLAT RECORDS OF DENTON COUNTY, TEXAS, AT VOLUME: 16, PAGE: 33, MAP RECORDS OF DENTON COUNTY, TEXAS.

The Court finds further that One Hundred Per Cent, (100. 0%), of the above-described and aforementioned Real Property and Estate, is the Community Property and Estate of Petitioner, LYN LARAINE (OTT) SEDDIO and Respondent, FRANK JOSEPH SEDDIO, JR., and is being divided herein, under the express terms, conditions and covenants of this "Agreed Final Judgment And Decree Of Divorce", all in accordance with the Texas Family Code, as amended and currently in force, and is a fair and equitable distribution all in accordance with the specific findings and rulings of this Court, and the Agreement Of the Parties.

PERSONAL PROPERTY

The sum certain in CASH, of Twenty Thousand And No/100-($20,000.00)-Dollars, which sum certain represents Petitioner, LYN LARAINE (OTT) SEDDIO's interest in Respondent's "Retirement, Deferred Compensation and Stock Purchase Accounts" in reference to Respondent's employment with E.D.S. Corporation (Company), and IT IS FURTHER ORDERED, ADJUDGED and DECREED that this sum certain in CASH of

Twenty Thousand And No/100-($20,000.00)-Dollars is and shall be payable to Petitioner, LYN LARAINE (OTT) SEDDIO, by Respondent, FRANK JOSEPH SEDDIO, JR., on or before the expiration of thirty (30) days from date of execution and entry of this "Agreed Final Judgment And Decree of Divorce", AND IS FURTHER SECURED by Note executed by Respondent, FRANK JOSEPH SEDDIO, JR. made payable to Petitioner, LYN LARAINE (OTT) SEDDIO, together with Lien retained by Petitioner, LYN LARAINE (OTT) SEDDIO, over and against the entire balance of Respondent's "Retirement Fund Package", "Deferred Compensation Package" and "Stock Purchase Package" with E.D.S. Corporation (Company) until said sum is paid by Respondent., FRANK JOSEPH SEDDIO, JR., to Petitioner, LYN LARAINE (OTT) SEDDIO, in full.

All household furniture, furnishings, fixtures, goods, appliances and equipment in the possession of, or subject to the sole custody and control of Petitioner, save and except specific items hereinafter awarded to Respondent;

All clothing, jewelry, and other personal possessions and effects in the possession of, or subject to the sole custody and control of Petitioner, save and except specific items hereinafter awarded to Respondent;

Any and all sums of cash in the possession of, or subject to the custody and control of Petitioner, including any and all monies on account in any and all financial institutions, wheresoever located, which accounts stand in Petitioner's name or from which accounts Petitioner has the right to withdraw funds or which are otherwise subject to Petitioner's custody and control, save and except any awards of cash, specifically hereinafter awarded to Respondent, if any;

One Hundred Per Cent of any and all sums, whether matured or unmatured, accrued or unaccrued, vested or otherwise, together with any and all increases thereof, the proceeds therefrom, and any other rights related to any profit-sharing plan, retirement plan, pension plan, employee stock option plan, employee savings plan, accrued unpaid bonuses or other benefit program existing by reason of Petitioner's employment, past, present and/or future, if

any;

Any and all insurance, pensions, retirement benefits and other benefits arising out of Petitioner's membership in any National, State and/or Local Trade Union, if any;

Any and all life insurance policies insuring the life of Petitioner, inclusive of, and not limited to that certain New York Life Insurance Policy, Certificate No.

Any and all stocks, bonds and securities registered in the name of Petitioner, together with all dividends, splits and other rights and privileges in connection therewith.

Any and all businesses run by Petitioner if any, including, but not limited to, all furniture fixtures, machinery, equipment, inventory, cash? accounts receivable, goods and supplies; all personal property used in connection with the operation of such business; and any and all rights and privileges, past, present, or future, arising out of, or in connection with the operation of such business.

The sum certain in cash, representing Petitioner's one-half (1/2) interest in and to that certain 19-inch color television with remote control, that certain Hitachi VCR and AT&T portable telephone, all due and payable by FRANK JOSEPH SEDDIO, JR., (from insurance proceeds received by Respondent, FRANK JOSEPH SEDDIO, JR.) to LYN LARAINE (OTT) SEDDIO, on the date of entry of this Agreed Final Judgment And Decree Of Divorce, which sum certain in cash, in the exact amount of Four Hundred Forty Four And 84/100-($444.84)-Dollars, represents payment in full of Petitioner's right, title and/or interest in and to that certain community of the Parties., to wit: one certain 19-inch color television with remote control, that certain Hitachi VCR and that certain AT&T portable telephone, stolen and removed from the community residence of the Parties at 734 Red Wing Drive, Lewisville, Denton County, Texas, 75067, during the pendency of this Cause of Action, by person or persons unknown to Petitioner, LYN LARAINE (OTT) SEDDIO;

Six month's payment by Respondent, FRANK JOSEPH SEDDIO, JR., of comprehensive automobile insurance coverage, specifically

covering Petitioner, LYN LARAINE (OTT) SEDDIO, and her automobile, from January, 1991, through and until 20 July, A.D. 1991, which insurance and insurance premium is currently being paid by Respondent, through insurance providers providing automobile insurance coverage for the Parties as of the date of the entry of this Agreed Final Judgment And Decree of Divorce.

Fifty percent (50%) of that certain "Max" Federal Credit Union Account, Account No. 38500 ' Montgomery, Alabama, in the total approximate amount of $218.16;

Fifty percent (50%) of that certain Langley Federal Credit Union Account, Account No. 4702242673, Riverdale Station, Post Office Box No. 74633. Hampton, Virginia, 23666, in the total approximate amount of $196.54;

DIVISION OF MILITARY RETIREMENT BENEFITS OF RESPONDENT (QUADRO)

1. This Court specifically further finds that Respondent FRANK JOSEPH SEDDIO, JR., has served in the United States Airforce, for a period of two hundred forty one (241) months, and has been married to Petitioner, LYN LARAINE (OTT) SEDDIO, for a period of months during that tenure of employment.

This Court further specifically finds that FRANK JOSEPH SEDDIO, JR., at the date of this Final Judgment And Decree Of Divorce, holds the rank of Master Sergeant, with twenty (20) years and one (1) months of service.

FRANK JOSEPH SEDDIO, JR.'s rights under the Soldiers' and Sailors' Civil Relief Act (50 U.S.C.app.Sec.501,Et.Seq.) were observed by this Court.

IT IS THEREFORE FURTHER ORDERED, ADJUDGED and DECREED that LYN LARAINE (OTT) SEDDIO, shall have Judgment against and recover from FRANK JOSEPH SEDDIO, JR., if, as and when retirement is received by FRANK JOSEPH SEDDIO, JR., a monthly amount of money equal to fifty (50%) per cent of that monthly amount tha t a retired Master Sergeant, with twenty (20) years' of service will receive on the date FRANK JOSEPH SEDDIO, JR., begins to receive his retirement, together with the same percentage of any and all cost-of-living related increases to which FRANK JOSEPH SEDDIO, JR. shall become entitled for the period beginning on the date of

retirement and ending on the death of FRANK JOSEPH SEDDIO, JR.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that FRANK JOSEPH SEDDIO, JR., is designated by this Court as a CONSTRUCTIVE TRUSTEE, for the benefit of LYN LARAINE (OTT) SEDDIO, for the purpose of receiving the retirement payments and benefits, and FRANK JOSEPH SEDDIO.. JR., is FURTHER ORDERED and DECREED to directly pay the resulting product defined above to LYN LARAINE (OTT) SEDDIO, within three (3) days after receipt of it by FRANK JOSEPH SEDDIO, JR.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that any and all payments made directly to LYN LARAINE (OTT) SEDDIO, by the United States government under this benefit division, shall be a credit against this obligation.

This Court finds specifically further that Petitioner, LYN LARAINE (OTT) SEDDIO and Respondent., FRANK JOSEPH SEDDIO, JR., were married on the 30th day of June, A.D., 1962, in Port Jervis, New York, and their Marriage and Marriage Relationship, each to the other, has lasted for ten (10) years or more, during which time FRANK JOSEPH SEDDIO, JR. served ten (10) or more years of creditable service toward retirement.

2. FRANK JOSEPH SEDDIO, JR.'s Social Security Number is: 092-32-7912), and Respondent, FRANK JOSEPH SEDDIO., JR. 's 'address is 734 Red Wing Drive, Lewisville, Denton County, Texas, 75067, and FRANK JOSEPH SEDDIO, JR. 's date of birth is 10 July, A.D.
1942;

3. LYN LARAINE (OTT) SEDDIO's Social Security Number is: 110-34-9213 and Petitioner, LYN LARAINE (OTT) SEDDIO's address is Army Airforce Exchange Services, 3911 South Walton Walker Boulevard, Post Office Box No. 660202, Dallas, Dallas County, Texas, 75266-0202 AD-P/T, and LYN LARAINE (OTT) SEDDIO's date of birth is 09 January, A.D., 1945;

4. That all rights of FRANK JOSEPH SEDDIO, JR. under the Soldiers' And Sailors' Relief Act of 1940 were and have been fully observed and complied with by this Court in this Cause of Action;

5. That the award of retirement pay made to LYN LARAINE (OTT) SEDDIO, is made in conformity with, and in

compliance with, the Uniformed Services Former Spouses' Protection Act;

6. That it is intended by this Court that the Secretary of the Airforce or his designee, make the payments due to LYN LARAINE (OTT) SEDDIO, of her interest in the retirement benefits awarded in this Final Judgment And Decree Of Divorce directly to LYN LARAINE (OTT) SEDDIO;

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the Secretary of the Airforce, or his designated agent, shall pay to LYN LARAINE (OTT) SEDDIO, directly, each month, LYN LARAINE (OTT) SEDDIO's interest awarded herein in the United States Airforce disposable retired or retainer pay paid as a result of FRANK JOSEPH SEDDIO, JR.'s service in the United States Airforce, plus fifty (50%) per cent of all cost of living or other increases in the United States Airforce disposable retired or retainer pay, on a monthly basis, if, as and when said retirement pay is due to be paid. It is the Court's intention that, if that dollar amount or "award" (or a larger sum as increases take effect) exceeds fifty (50%) per cent of the disposable retired or retainer p4y, the Secretary of the Airforce, or his designated agent, shall pay to LYN LARAINE (OTT) SEDDIO the maximum amount allowable under the Uniformed Services Former Spouses' Protection Act, and that FRANK JOSEPH SEDDIO, JR., shall be responsible for paying the balance of the award each month to LYN LARAINE (OTT) SEDDIO, and it is accordingly so ORDERED and DECREED.

IT IS FURTHER ORDERED, ADJUDGED and DECREED, in this regard, that FRANK JOSEPH SEDDIO, JR., is hereby designated and appointed by this Court as a CONSTRUCTIVE TRUSTEE for the benefit of LYN LARAINE (OTT) SEDDIO, to the extent of LYN LARAINE (OTT) SEDDIO's interest in the United States Airforce disposable retired or retainer pay paid as a result of FRANK JOSEPH SEDDIO, JR.'s service in the United States Airforce and FRANK JOSEPH SEDDIO, JR., is ORDERED FURTHER to pay to LYN LARAINE (OTT) SEDDIO, LYN LARAINE (OTT) SEDDIO's interest of same each month as it is received by FRANK JOSEPH SEDDIO, JR., and in no event later than the fifth (5th) day of each month in which FRANK JOSEPH SEDDIO, JR.), receives such retirement, beginning the fifth (5th) day of the first (1st) month in which said retirement is paid following the date the Final Judgment

And Decree Of Divorce is signed by this Court. This paragraph shall be applicable to the extent that the Secretary of the Airforce or his designee fails to pay directly to LYN LARAINE (OTT) SEDDIO, her monthly entitlement as awarded herein or any portion of said monthly entitlement.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that for purposes of this Final Judgment And Decree Of Divorce, that FRANK JOSEPH SEDDIO, JR., is specifically directed, upon penalty of contempt, to pay LYN LARAINE (OTT) SEDDIO's interest in the retirement pay to LYN LARAINE (OTT) SEDDIO, as Ordered herein. FRANK JOSEPH SEDDIO, JR., is specifically directed that FRANK JOSEPH SEDDIO, JR., is not relieved of such obligation except to the extent FRANK JOSEPH SEDDIO, JR., is notified that one hundred (100%) per cent of LYN LARAINE (OTT) SEDDIO's interest in the retirement benefit has been paid directly to LYN LARAINE (OTT) SEDDIO, by the Secretary of the Airforce or his designated agent.

IT IS FURTHER ORDERED ADJUDGED and DECREED that the payment of the disposable retirement pay awarded herein to LYN LARAINE (OTT) SEDDIO shall continue until the death of FRANK JOSEPH SEDDIO, JR., or LYN LARAINE (OTT) SEDDIO.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that since LYN LARAINE (OTT) SEDDIO is entitled to her percentage interest in any cost of living or other increase in the united states Airforce retired or retainer pay, that FRANK JOSEPH SEDDIO, JR, shall send to LYN LARAINE (OTT) SEDDIO, at her above-listed address, or at such other address as LYN LARAINE (OTT) SEDDIO may from time to time provide in writing, within five (5) days of receipt of same, a copy of each retired pay voucher that FRANK JOSEPH SEDDI0, JR., receives in the future.

MEDICAL AND COMMISSARY PROVISIONS FOR MILITARY DIVORCES

This Court finds specifically further that LYN LARAINE (OTT) SEDDIO, is entitled to receive medical and dental care pursuant to the terms of 10 U.S.C. Sec. 1701, et seq. and to commissary and post exchange privileges to the same extent and on the same basis as a surviving spouse of a retired member of the Uniformed Services following the date this Final Judgment And

Decree Of Divorce is signed by this Court. FRANK JOSEPH SEDDIO, JR., therefore, is ORDERED to cooperate as necessary, by timely taking whatever action is necessary to enable LYN LARAINE (OTT) SEDDIO, to retain and/or obtain such benefits upon LYN LARAINE (OTT) SEDDIO's request for the benefit of LYN LARAINE (OTT) SEDDIO.

That certain 1990 Oldsmobile Cutlass Ciera model motor vehicle and automobile which motor vehicle is currently in the possession of, or otherwise subject to the custody and control of Petitioner, bearing V.I.N. No:_____ together with all prepaid insurance, keys and title documents.

Any and all other miscellaneous personal property and effects, currently in the possession of, or otherwise subject to the custody and control of Petitioner, not hereinafter specifically awarded to Respondent, which personal property herein awarded to Petitioner is inclusive of, but not limited to the following:

That certain Piano and matching piano bench; Two certain barrel chairs; One certain love-seat; Two certain glass-topped tables; Two certain glass lamps; Certain various knick-knacks; That certain wine rack and collection of wine; Those certain house plants; That certain table and matching six chairs; That certain buffet furniture; That certain bottom hutch; That certain master bedroom suite; That certain television unit; That certain sewing machine and matching cabinet; Two certain telephones; That certain silver collection; That certain Afghan; Those certain 25th wedding anniversary gifts; Those certain books; Those certain figurines and pictures; That certain clarinet; That certain two-piece cake plate; That certain two-piece cheese set; That certain six-piece glass set; That certain glass set; That certain sauce bowl; That certain potpourri pot, bowl and relish tray; That certain canister set; Those certain plaques and wall hangings; That certain pressure cooker; That certain large mixer and miscellaneous items; That certain antique orange juice squeezer; That certain canning pot; That certain meat slicer; that certain toaster; That certain can openerThat certain deep fat fryer; That certain crockpot; That certain set of silverware; That certain set of Noritake china; Those certain everyday dishes; Those certain glasses (drinking); That certain blender unit; that certain microwave oven; That certain microwave stand; That certain

corningware cookware; That certain set of spices; That certain Noritake tea set; That certain canister set; Those certain television trays; that certain washer and dryer unit; That certain set of cookbooks; That certain vacuum cleaner; Miscellaneous items for vacuum cleaner; That certain freezer; That certain set of Christmas decorations; That certain children's rocking chair; That certain magazine rack; That certain cradle and doll; Those certain tools of Petitioner; That certain skydiving equipment of Petitioner; Those certain wines and liquors of Petitioner; Those certain wall decorations; That certain bookshelf in bedroom; That certain savings/shopper's club membership of Petitioner; That certain wall decorations; Those certain pictures in the study; All of Petitioner's clothing; Those certain army blankets; Those certain suitcases-, Those certain hanging plants; Those certain personal toiletries Those certain doilies; Those certain wall decorations in hall of house; That certain umbrella stand and flowers;

All of Petitioner's miscellaneous separate property and estate, not otherwise currently in the possession of, or otherwise subject to the custody and control of Petitioner, which separate property and estate items are currently located on or about the premises and homestead of the Parties located at 734 Red Wing Drive, Lewisville, Denton County, Texas, 75067, all of which separate property items are hereby confirmed unto Petitioner;

PROPERTY TO RESPONDENT

Respondent, FRANK JOSEPH SEDDIO, JR., is awarded the following as Respondent's sole and separate property and estate, and Petitioner, LYN LARAINE (OTT) SEDDIO, is hereby divested of any and all right, title and interest in and to such property; and by these presents, the said LYN LARAINE (OTT) SEDDIO, does hereby grant, trade, convey, transfer, affirm, confirm, consign and assign the following real and personal property unto Respondent, FRANK JOSEPH SEDDIO, JR.:

Nothing contained immediately above in this paragraph is to be construed for any purpose, as a taxable event, either for Petitioner or for Respondent, and it is the express intention of the Parties, that the above represents assignment and transfer of presently owned and is not for any purposes to be construed by any person as a sale and otherwise taxable event a present division

assignment and transfer of property owned Community property, and is not for any purposes to be construed by any person as a sale or other taxable event.

REAL PROPERTY AND ESTATE

SUBJECT TO PAYMENT BY RESPONDENT, FRANK JOSEPH SEDDIO, JR., TO PETITIONER, LYN LARAINE (OTT) SEDDIO, OF THE SUM CERTAIN OF THREE THOUSAND AND NO/100-($3,000.00)-DOLLARS, WHICH SUM CERTAIN REPRESENTS PETITIONER'S UNDIVIDED COMMUNITY EQUITY INTEREST IN THE FOLLOWING DESCRIBED REAL PROPERTY AND ESTATE, ONE HUNDRED PER CENT (100%) OF ALL COMMUNITY PROPERTY INTEREST, IN AND TO ALL OF THAT CERTAIN LOT, TRACT AND/OR PARCEL OF LAND AND ESTATE, TOGETHER WITH ANY AND ALL APPURTENANCES THERETO, IMPROVEMENTS LOCATED THEREON, AND HEREDITAMENTS THERETO IN ANYWISE BELONGING, BEING COMMONLY DESCRIBED AND KNOWN AS 734 RED WING DRIVE, LEWISVILLE, DENTON COUNTY, TEXAS 75067, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL OF THAT CERTAIN LOT, TRACT AND/OR PARCEL OF LAND, TOGETHER WITH ANY AND ALL APPURTENANCES THERETO, IMPROVEMENTS LOCATED THEREON AND HEREDITAMENTS THERETO IN ANYWISE BELONGING, IN THE CITY OF LEWISVILLE, DENTON COUNTY, TEXAS, 75067, BEING FURTHER DESCRIBED AS LOT___, BLOCK___, OF _____, AN ADDITION TO THE CITY OF LEWISVILLE, DENTON COUNTY, TEXAS, 75067, ACCORDING TO THE MAP AND PLAT RECORDS THEREOF, DULY RECORDED IN THE MAP AND PLAT RECORDS OF DENTON COUNTY, TEXAS, AT VOLUME: ____ PAGE:___ MAP RECORDS OF DENTON COUNTY, TEXAS.

The Court finds further that One Hundred Per Cent, (100.0%), of the above-described and aforementioned Real Property and Estate, is the Community Property and Estate of Petitioner, LYN LARAINE (OTT) SEDDIO and Respondent,

FRANK JOSEPH SEDDIO, JR., and, subject to the payment of the sum certain in cash of Three Thousand And No/100-($3,000.00)-Dollars, by Respondent, FRANK JOSEPHS SEDDIO, JR., to Petitioner, LYN LARAINE (OTT) SEDDIO, is being divided with One Hundred Per Cent (100%) being awarded to Respondent, FRANK JOSEPH SEDDIO, JR., all in accordance with the Texas Family Code, as amended and currently in force, and is a fair and equitable distribution all in accordance with the specific findings and rulings of this Court, and the Agreement Of the Parties.

PERSONAL PROPERTY

All household furniture, furnishings, fixtures, good, appliances and equipment in the possession of, or otherwise subject to the custody and control of Respondent, save and except those items hereinbefore specifically awarded to Petitioner.

Any and all clothing, jewelry and other personal effects in the possession of, or otherwise subject to the custody and control of Respondent, save and except those items hereinbefore specifically awarded to Petitioner.

Any and all sums of cash in the possession of, or otherwise subject to the custody and control of Respondent, including any and all monies on account in any and all financial institutions, wheresoever located, which accounts stand in the name of Respondent., or from which accounts Respondent has the right to withdraw funds., or which are otherwise subject to the sole custody and control of Respondent, save and except those accounts and monies hereinbefore specifically awarded to Petitioner.

Fifty percent (50%) of that certain "Max" Federal Credit Union Account, Account No. 38500, Montgomery, Alabama, in the total approximate amount of $218.16;

Fifty percent (50%) of that certain Langley Federal Credit Union Account, Account No. 4702242673, Riverdale Station, Post Office Box No. 7463, Hampton, Virginia, 23666, in the total approximate amount of $196.54;

Subject to the payment by Respondent, FRANK JOSEPH SEDDIO, JR., to Petitioner, LYN LARAINE (OTT) SEDDIO, of

the sum certain IN CASH, of Twenty Thousand And No/100-($20,000.00)-Dollars, on or before the expiration of thirty (30) days from date of execution and entry of this "Agreed Final Judgment And Decree Of Divorce" with Lien retained by LYN LARAINE (OTT) SEDDIO, in any and all Retirement Accounts, Deferred Compensation Accounts and Stock Purchase Accounts of Respondent, FRANK JOSEPH SEDDIO, JR., otherwise due and payable to Respondent, FRANK JOSEPH SEDDIO, JR. , as a result of Respondent FRANK JOSEPH SEDDIO's employment with "E.D.S. Corporation", Respondent, FRANK JOSEPH SEDDIO, JR. , is awarded One Hundred Per Cent of any and all sums, whether matured or unmatured, accrued or unaccrued, vested or otherwise, together with any and all increases thereof, the proceeds therefrom, and any other rights related to any retirement plan, pension plan, employee stock option plan, employee savings plan, accrued unpaid bonuses or other benefit program existing by reason of Respondent's employment, past, present and/or future together with all consequential benefits thereto in any manner appertaining, inclusive of, but not limited to the following:

One hundred percent (100%) of all of that certain E.D.S. Deferred Compensation Plan, with an approximate account balance as of 12-31-89, in the total approximate amount of $11,730-70;

One hundred percent (100%0 of all of that certain E.D.S. Stock Purchase Plan account, consisting, as of 02-16-90, of approximately 293 shares of stock, with a per unit stock value of approximately $43.64 per share, together with any and all additions thereto since that date and time;

One Hundred percent (100%) of the approximate sum of $11 000.00 (+/-) which sum of monies was removed by Respondent, from E.D.S. stock accounts during the pendency of this Cause of Action;

One hundred percent (100%) of all of that certain E.D.S. Retirement Plan Account, with an approximate account balance as of 02-16-90, payable at normal retirement date under single life annuity provisions, in the amount of $3,879.12 per year, with a present value of annual accrued benefit as of 02-16-90 in the approximate amount of $11,149.41, with a vesting date of 07-01-

89, and with a participation date in the "Plan" of 07-01-83;

Any and all insurance, pensions, retirement benefits, and other benefits arising out of Respondent's membership in any National, State and/or Local Trade Union, if any, save and except any and all portions of those retirement/annuity/pension benefits herein previously and specifically awarded to Petitioner;

Any and all policies of life insurance insuring the life of Respondent;

Any and all stocks, bonds, and securities registered in the name of Respondent, together with all dividends, splits, and other rights and privileges in connection therewith, save and except

any such stocks, bonds and securities registered 'in the name of Respondent, which form any portion of the retirement/ annuity/pension benefits herein specifically awarded to Petitioner;

That certain 1988 van model motor vehicle and automobile which motor vehicle is currently in the possession of, or otherwise subject to the custody and control of Respondent, bearing V.I.N. No: _____, together with all prepaid insurance, keys and title documents.

That certain 1980 MGB model motor vehicle and automobile which motor vehicle is currently in the possession of, or otherwise subject to the custody and control of Respondent, bearing V.I.N. No: _____, together with all prepaid insurance, keys and title documents.

Any and all. businesses run by Respondent, if any, including but not limited to, all furniture, fixtures, machinery, equipment, inventory, cash, accounts receivable, goods and supplies; all personal property used in connection with the operation-of such business; and any and all rights and privileges, past, present or future, arising out of, or in connection with the operation of such business;

Any and all other miscellaneous personal property and effects currently in the possession of, or otherwise subject to the custody

and control of Respondent, not hereinbefore specifically awarded to Petitioner;

Any and all separate personal property of Respondent, which separate personal property of Respondent, is currently in the possession of Respondent, or otherwise subject to the exclusive custody and control of Respondent., all of which separate property and estate is hereby confirmed unto Respondent;

Any and all remaining insurance proceeds, due and payable to Respondent and Petitioner, as a result of the burglaries of the house and residence of the Parties at 734 Red Wing Drive, Lewisville, Denton County, Texas, 75067, save and except that certain portion of those insurance proceeds herein previously awarded to Petitioner;

One Hundred Per Cent (100%) of any and all United States Airforce "Disability Benefits" due and payable to Respondent by, through and by reason of, Respondent's service with the United States Airforce, in the approximate amount of $73.00 per month;

PAYMENT OF MONIES TO PETITIONER SECURED BY NOTE AND LIEN

IT IS FURTHER ORDERED, ADJUDGED and DECREED, that anything contained herein to the contrary notwithstanding, Petitioner, LYN LARAINE (OTT) SEDDIO., is granted a JUDICIAL LIEN over and against any and all retirement accounts, deferred compensation accounts and stock purchase accounts of Respondent, herein awarded to Respondent, or otherwise belonging to Respondent to secure payment by Respondent, FRANK JOSEPH SEDDIO, JR., to Petitioner, LYN LARAINE (OTT) SEDDIO, of the sum certain of Twenty Thousand And No/100-($20,000-00)-Dollars, due and payable by Respondent, FRANK JOSEPH SEDDIO, JR. , to Petitioner, LYN LARAINE (OTT) SEDDIO., on or before the expiration of thirty (30) days of date of execution and entry of this "Agreed Final Judgment And Decree Of Divorce."

IT IS FURTHER ORDERED, ADJUDGED and DECREED that concurrent with the execution and entry of this

"Agreed Final Judgment And Decree Of Divorce", Respondent, FRANK JOSEPH SEDDIO, JR., shall additionally execute a Note in the amount of Twenty Thousand And No/100-($20,000.00)-Dollars, made payable to Petitioner, LYN LARAINE (OTT) SEDDIO, additionally securing the payment to Petitioner by Respondent of the sum certain of Twenty Thousand And No/100-($20,000.00)-Dollars, which sum represents Petitioner's interest in Respondent's Retirement Fund, Stock Purchase Fund and Deferred Compensation Fund with E.D.S. Corporation (Company).

DIVISION OF INDEBTEDNESS OF PARTIES

IT IS FURTHER ORDERED, ADJUDGED and DECREED that Petitioner shall pay, as a part of the division of the Estate of the Parties, the following debts and obligations and shall indemnify and hold Respondent and Respondent's property harmless from any failure to so discharge these debts and obligations:

Any and all debts, charges, liabilities and other obligations incurred by Petitioner from and after the date of separation, that date being 08 September, A.D., 1989, unless express provision is made herein to the contrary;

Any and all ad valorem taxes, assessments, or other charges due or to become due on the real and personal property herein awarded to Petitioner, unless express provision is made herein to the contrary;

IT IS FURTHER ORDERED, ADJUDGED and DECREED that Respondent shall pay, as a part of the division of the Estate of the Parties, the following debts and obligations, and shall indemnify and hold Petitioner and Petitioner's property harmless from any failure to so discharge such debts and obligations:

The sum certain of Three Thousand And No/100-($3,000-00)-Dollars, in cash, due and payable by Respondent, FRANK JOSEPH SEDDIO, JR., to Petitioner, LYN LARAINE (OTT) SEDDIO, on or before 19 February, A.D.J. 1991, which sum represents Petitioner's "Equity Interest" in and to that certain real property and estate commonly known and described as 734 Red Wing Drive, Lewisville, Denton County, Texas, 75067;

The sum certain in cash, of Twenty Thousand And No/100-($20,000.00)-Dollars, due and payable by Respondent, FRANK JOSEPH SEDDIOP JR., to Petitioner, LYN LARAINE (OTT) SEDDIO, on or before the expiration of thirty (30) days from date of execution and entry of this "Agreed Final Judgment And Decree Of Divorce".. which sum represents Petitioner's "Equity Interest" in Respondent's Retirement Account, Stock Purchase Account and Deferred Compensation Account, by virtue of Respondent's employment with E.D.S. Corporation (Company), being additionally secured by "Note" and "Judicial Lien" herein previously awarded by this Court to Petitioner, to secure payment;

Any and all. debts, charges, liabilities and other obligations incurred by Respondent from and after the date of separation, that date being-08 September, A.D., 1989, unless express provision is made herein to the contrary;

Any and all ad valorem taxes, assessments, or other charges due or to become due on the personal property herein awarded to Respondent, unless express provision is made herein to the contrary;.

The sum certain representing six month's comprehensive insurance coverage on Petitioner's automobile from January, 1991, through and until 31 July, A.D., 1991, which sum of monies is currently being paid for insurance on Petitioner's automobile herein awarded to Petitioner, pursuant to the Temporary Orders entered previously in this Cause of Action, this provision of Temporary Orders not being released until paid in full;

The total outstanding balance due and owing to any and all Credit Card Account companies, revolving charge account companies and/or other financial institutions which have extended- open lines of credit to the Parties during the existence of the Marriage and Marriage Relationship of the Parties

The sum certain of One Hundred Twelve And 50/100- ($112.50)-Dollars, which sum is due and owing by Respondent to Petitioner, and which sum represents one-half (1/2) of E.D.S. insurance reimbursement made to the Parties, and received by Respondent,

which sum certain shall be paid by Respondent, FRANK JOSEPH SEDDIO, JR., to Petitioner, LYN LARAINE (OTT) SEDDIO, on or before 19 February, A.D., 1991, concurrent with the entry and execution by this Court of the "Agreed Final Judgment and Decree of Divorce."

ATTORNEY'S FEES AND COSTS OF PROCEEDING

IT IS FURTHER ORDERED, ADJUDGED and DECREED that to effect an equitable division of the Marital Estate of the Parties, and as a part of the division, each Party shall be responsible for and shall pay his or her own Attorney's Fees, Expenses and Costs of Court, incurred as a result of legal representation in this Cause of Action.

UNITED STATES FEDERAL INCOME TAX REFUND

IT IS FURTHER ORDERED, ADJUDGED and DECREED that each party, shall be responsible for and shall pay without further Order of this Court issuing, all United States Federal Income Tax liabilities of the Parties due and owing by Party, from and after the date of Marriage through and until 31 December, A.D., 1990, to the extent that such tax liability exceeds monies previously withheld from the Parties and prepaid by the Parties through Federal Withholding;

IT IS FURTHER ORDERED, ADJUDGED and DECREED that for calendar year, 1991, each Party shall file a separate return and report as that Party's income, 50% of all community income or loss attributable to the Parties, or either of them, before the date of Divorce, all income attributable to the reporting Party after that date, and all the reporting Party's separate income during any part of the year. Each Party shall take credit on that Party's return for 50% of all prepayments occurring before the date of Divorce and reporting Party's prepayments and withholdings the date of Divorce.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that LYN LARAINE (OTT) SEDDIO and FRANK JOSEPH SEDDIO, JR., shall each furnish such information to the other Party as is requested to prepare United States income Taxation returns for each Party for the year in which this Divorce

Decree is entered, and in no event shall such information be exchanged later than 01 March of the year following the year in which this Divorce Decree is entered. Each Party shall pay for the preparation of his or her own United States Federal Income Taxation return for the year in which this Divorce Decree is entered.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that if a refund is made for overpayment of taxes for any year during the Parties' Marriage, through and until 31 December, A.D., 1989, each Party hereto shall be entitled to one-half, (1/2) of the refund, and the Party receiving the refund check is designated as a Constructive Trustee for the benefit of the other Party, to the extent of one-half, (1/2) of the total amount of the refund, and shall pay to the other Party one-half, (1/2) of the total amount of the refund check or draft within five (5) days of receipt thereof.

IT IS FURTHER ORDERED ADJUDGED and DECREED that from and after 31 December, A.D., 1989, each Party to this Cause of Action, shall be entitled to, and shall receive One Hundred Per Cent (100%) of any and all such United States Internal Revenue Service Income Taxation Refund payment made, if any.

PRESERVATION OF RECORDS

IT IS FURTHER ORDEREDY ADJUDGED and DECREED that each Party to this Cause of Action shall keep and preserve for a period of four (4) years from the date of entry of this "Final Judgment and Decree of Divorce" any and all financial records relating to the Community Estate, and each Party to this Cause of Action is further ORDERED to allow the other Party access to these records in the event of any Federal, State or Local Taxation Audits.

REMOVAL OF PERSONAL ITEMS FROM PREMISES

IT IS FURTHER ORDERED, ADJUDGED and DECREED that Petitioner, LYN LARAINE (OTT) SEDDIOV shall remove any and all remaining items of personal property of Petitioner, herein awarded or confirmed to Petitioner, from the homestead and residence of the Parties, located at 734 Red Wing

Drive, Lewisville, Denton County, Texas, 75067, on a date to be agreed to by the Parties hereto, with the Party's' son being present at such time as Petitioner removes her property herein awarded to her, and with Respondent being absent from such premises at the time of removal of Petitioner's personal property. If necessary, prior to removal of all such property, Respondent may examine and inspect such property selected by Petitioner, outside of two (2) days prior to its actual physical removal.

DIVISION OF ASSETS AND LIAIBLITIES NOT PROVIDED FOR IN AGREEMENT

IT IS FURTHER ORDERED, ADJUDGED and DECREED that as part of the division of the Estate of the Parties, any Community Property or its value not otherwise awarded by this Agreement, and not secreted by the Party in possession of such property, from the other Party, is awarded to the spouse and Party in possession or control of the property.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that as part of the division of the Estate of the Parties, any Community Property or its value not otherwise awarded by this Agreement, and secreted by the Party in possession of such property, from the other Party, is awarded to the spouse and Party not in possession or control of the property.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that as part of the division of the. Estate of the Parties, any Community liability not expressly assumed by a Party under this Agreement will be paid by the Party personally incurring the liability.

EXECUTION, TRANSFER AND DELIVERY OF DEEDS AND TITLES

IT IS FURTHER ORDEREDV ADJUD GED and DECREED that Petitioner, LYN LARAINE (OTT) SEDDIO, and Respondent, FRANK JOSEPH SEDDIO, JR., are both specifically ORDERED to sign, execute and deliver to the other Party, any and all necessary Deeds, Car Titles, Bills of Sale and other related documents necessary to effectuate this "Final Judgment and Decree of Divorce", all of which documents as herein described being signed, executed and delivered, and being further ORDERED to be

signed, executed and delivered to the other Party, on or before the expiration of fifteen (15) days from the date of entry of this "Final Judgment and Decree of Divorce."

CONTRACTUAL AGREEMENTS VOLUNTARY, MUTUAL, AND CLEARLY UNDERSTOOD

Each Party to these binding Agreements, Covenants and Contractual Undertakings and Contractual Agreements, specifically Petitioner, LYN LARAINE (OTT) SEDDIO and Respondent, FRANK JOSEPH SEDDIO, JR., individually, hereby stipulates as follows:

1. This Agreement, and all of its provisions is based on valuable consideration, the mutuality and sufficiency of which being hereby acknowledged by Petition-er, LYN LARAINE (OTT) SEDDIO and Respondent, FRANK JOSEPH SEDDIO, JR., for all purposes;

2. Petitioner, LYN LARAINE (OTT) SEDDIO, and Respondent, FRANK JOSEPH SEDDIO, JR., each, has been and is, completely informed of the facts relating to the subject matter of these several binding Contractual Agreements, herein contained, and of the rights and liabilities of both Parties;

3. Each Party, Petitioner, LYN LARAINE (OTT) SEDDIO, and Respondent, FRANK JOSEPH SEDDIO, JR., enters into this Agreement(s) voluntarily and only after receiving the advice of independent Legal Counsel, or having been provided with the opportunity to seek independent advice from independent Legal Counsel;

4. Each Party, Petitioner, LYN LARAINE (OTT) SEDDIO and Respondent, FRANK JOSEPH SEDDIO, JR., has given careful, mature and informed thought and consideration to the making of this Agreement (s) ;

5. Each Party, Petitioner, LYN LARAINE (OTT) SEDDIO and Respondent, FRANK JOSEPH SEDDIO, JR, has carefully, intelligently and completely read each and every provision of this Agreement(s), and this "Agreed Final Decree Of Divorce and Binding Contractual Property Settlement Agreement",

and all of its provisions, herein contained;

6. Each Party, Petitioner, LYN LARAINE (OTT) SEDDIO, and Respondent, FRANK JOSEPH SEDDIOV JR., completely and fully understands, for all purposes, each and every provision of this Agreement(s), both as to the subject matter therein contained and the binding legal effect of all Agreements and Orders herein contained.

INDEMNIFICATION OF THE PARTIES

Each Party, Petitioner, LYN LARAINE (OTT) SEDDIO, and Respondent, FRANK JOSEPH SEDDIO, JR., each to the other, represents for all purposesP and further warrants, each to the other, that he or she has not incurred any debt, obligation or other liability, other than those described in this Agreement, on which the other Party is, or may be liable. Each Party further agrees, stipulates, covenants and contracts, each with the other, that if any claim, action or proceeding is hereinafter initiated seeking to hold the other Party liable for any other debt, obligation, liability, act, or omission of the Party, that Party will, at his or he sole cost and expense, inclusive of Attorney's Fees, defend the other Party against any such claim or demand, whether or not well founded, and will further indemnify and hold harmless the other Party from all damages resulting therefrom.

"Damages" as used herein, will include any loss, cost, expense, penalty, and other damage, including, without limitation, counsel fees and other costs and expenses reasonably incurred in investigating or in attempting to avoid same or oppose the imposition thereof or in enforcing this indemnity.

The indemnifying Party will reimburse the indemnified Party upon demand, for any payment made by the indemnified Party at anytime after the entry of the Divorce Decree to satisfy any Judgment of any court of competent Jurisdiction or pursuant to a bona fide compromise or settlement of claims, demands, or actions for any damages to which the foregoing indemnity relates.

Each Party further agrees, covenants and contracts further to give the other Party prompt written notice of any litigation threatened or instituted against either Party that might constitute

the basis of a claim for indemnity under this Agreement.

RIGHT TO LIVE SEPARATELY AND FREE FROM INTERFERENCE

Each Party to this Cause of Action, will live separately and apart from the other Party for the rest of his or her life, at any place or places that he or she may select, consistent with the Agreements And Orders herein contained. Neither Party to this Cause of Action, will molest, harass, annoy, injure, threaten or interfere with the other Party in any manner, whatsoever. Each Party may carry on and engage in any employment, profession, business or other activity as he or she may deem advisable for his or her sole use and benefit. Neither Party shall interfere with the use, ownership, enjoyment or disposition of any property now owned or hereafter acquired by the other Party.

NO LITIGATION PENDING AFFECTING PARTIES

Both Parties stipulate, each to the other, that to that arty's knowledge, there are no actions, suits or proceedings pending or threatened against either Party or the Community Estate or affecting any Community Property or rights, at Law or in Equity, or before any Federal, State, Municipal or other Governmental agency or instrumentality, domestic or foreign, and neither Party is aware of any facts that might result in any action, suit or proceeding, other than this proceeding.

JOINT BINDING AGREEMENT OF THE PARTIES

Each Party to this Cause of Action, and each Party to the other Party, does hereby confirm, affirm and stipulate that both Parties have voluntarily participated in the preparation of all Contractual provisions contained in this Agreement, and that same are to be construed, for all purposes, as absolutely contractually binding on both Parties to this Agreement, all as contained in this "Agreed Final Decree Of Divorce And Contractually Binding Property Settlement Agreement."

ENTIRE AGREEMENT OF THE PARTIES

This "Agreed Final Decree- Of Divorce And Contractually Binding Property Settlement Agreementlt together with the other contractually binding Agreements of the Parties, herein contained, supersede any and all other agreements, either oral or in writing,

between the Parties relating to the rights and liabilities arising out of their Marriage and Marital Relationship, each to the other, and constitutes the entire Agreement of the Parties, for all purposes.

PARTIAL INVALIDITY OF THIS AGREEMENT

If any provision of this Agreement is held by any Court of competent Jurisdiction to be invalid, void, or unenforceable, the remaining provisions contained herein will nevertheless and for all purposes, continue in full force and effect without being impaired or invalidated in any manner.

WAIVER-OF_BREACH OF ANY PROVISION

The waiver by one Party of any breach of this Agreement by the other Party, shall not be deemed a Waiver of any other provision of this Agreement, for any purpose.

AMENDMENT OR MODIFICATION OF THIS AGREEMENT

This "Agreed Final Decree Of Divorce and Contractually Binding Property Settlement Agreementst may be amended or modified further, only by written instrument executed by both Parties.

SUCCESSORS AND ASSIGNS

This Agreement, shall be binding upon, and will inure to the benefit of, the respective Legatees, Devisees, Heirs, Executors, Administrators, Assigns and Successors In Interest, of each of the Parties, hereto, specifically Petitioner, LYN LARAINE (OTT) SEDDIO and Respondent, FRANK JOSEPH SEDDIO, JR.

NOTICES TO THE PARTIES

Any Notice to be given under this Agreement by either Party to the other Party shall be in writing and may be effected by Registered or Certified Mail, Return Receipt Requested, showing attempted Delivery, or Delivery of same, and addressed to the other Party, at that Party's last known mailing address, as hereinabove provided.

LAW GOVERNING THIS AGREEMENT

This Agreement shall be governed by, and shall be construed in accordance with, the Law of the State of Texas, exclusively.

VENUE GOVERNING SUIT UNDER THIS AGREEMENT

Venue and Jurisdiction with reference to any Post-Judgment litigation, Post-Judgment Cause of Action and/or Post-Judgment Suit, Claim, or Equity Proceeding, is and shall be in and under the Jurisdiction and Venue or the 158th Judicial District Court, in and for Denton County, Texas, sitting at Denton, Denton County, Texas.

ATTORNEY'S FEES AND EXPENSES FOR ENFORCEMENT OF THIS AGREEMENT

Reasonable Attorney's Fees and Expenses of a Party incurred in successfully prosecuting or defending a suit under this Agreement against the other Party, or the other Party's Estate shall be recoverable by the successful Party in such action, together with interest thereon.

BILL OF REVIEW

If either Party seeks a modification of this Agreement by equitable "Bill Of Review" and the initiating Party fails to succeed in setting aside this Agreement, then the initiating Party will be liable to the defending Party for any costs, Attorney's Fees, consultant's fees, appraisal fees and any other expenses incurred in defending such action.

AGREEMENTS OF THE PARTIES MERGED IN THE ORDER OF THIS COURT

The Parties, each to the other, do hereby further, and by these presents, do further covenant, agree, stipulate and contract, that each and every agreement contained herein, is merged into, and by consent and stipulation of the Parties, each to the other, become upon execution hereof, the Order of this Court.

TEMPORARY ORDERS GOVERNING PARTIES ARE RELEASED

IT IS FURTHER ORDERED ADJUDGED and DECREED that, except as specifically set forth herein, that Petitioner and Respondent are hereby discharged from all further liabilities and obligations imposed by the Temporary Orders of this Court previously entered herein, if any, as of the date of entry of this "Agreed Final Judgment And Decree Of Divorce."

NECESSARY CLARIFYING ORDERS

IT IS FURTHER ORDERED, ADJUDGED and DECREED that without in any manner affecting the Finality of this "Final Judgment And Decree of Divorce". this Court expressly reserves the right to make any additional Orders necessary to clarify and enforce this "Agreed Final Decree of Divorce."

RELIEF NOT GRANTED, IS DENIED

IT IS FURTHER ORDERED, ADJUDGED and DECREED that any and all other relief requested in the this Cause of Action, and not expressly granted herein, be, and the same is, hereby DENIED.

DATE OF JUDGMENT

This "Final Judgment and Decree of Divorce" and other associated and related Orders judicially announced and rendered in open-Court in the 158th Judicial District Court in and for Denton County, Texas, at Denton, Denton County, Texas, on the 19th day of February, A.D., 1991, and further noted on the Court's Docket Sheet on the same date, and ministerially signed and ratified on the 19th day of February, A.D., 1991.

SIGNED

JUDGE PRESIDING

APPROVED AS TO FORM AND CONTENT AND
AGREED TO AS BINDING CONTRACTUAL AGREEMENT
OF THE PARTIES

SIGNED 19 Feb 91
LYN LARAINE (OTT) SEDDIO, DATE OF EXECUTION
PETITIONER AND COUNTER-RESPONDENT

SIGNED Feb 19 1991
FRANK JOSEPH SEDDIO, JR. DATE OF EXECUTION
RESPONDENT AND COUNTER-PETITIONER

PREPERED BY: RANDALL A. ANTONSON, P.C.
RANDALL A. ANTONSON, 01275500
619 MERCURY PLACE, SUITE 107
DUNCANVILLE, TEXAS 75137
(214) 298-6925-9951
ATTORNEYS FOR PETITIONER
COMPUTER REFERENCE: SEDDIO
UNAPPROVED AS TO CONTENT

HON. RICHARD S. PODGORSKI, ATTORNEY AT LAW
RICHARD S. PODGORSKI, T.B.N. 16082500
326-B, EAST MCKINNEY STREET
POST OFFICE BOX NO. 2494
DENTON, DENTON COUNTY, TEXAS 76201-2
(817) 387-3869-3961
ATTORNEYS FOR RESPONDENT
UNAPPROVED AS TO CONTENT

NO. 89-3400-367

IN THE MATTER OF	)	IN THE DISTRICT COURT
THE MARRIAGE OF	)	
LYN LARAINE (OTT)	)	IN AND FOR
SEDDIO MICHAELS	)	DENTON COUNTY, TEXAS
PETITIONER	)	
	)	
AND	)	
	)	
FRANK JOSEPH SEDDIO,	)	
JR. RESPONDENT	)	367th JUDICIAL DISTRICT

ORDER GRANTING MOTION FOR ENFORCEMENT

On this 17th day of July, 1997, came on to be heard Movant's Motion for Enforcement of Agreed Final Judgment and Decree of Divorce and Binding Contractual Property Settlement Agreement of the Parties, hereinafter referred to as Motion for Enforcement.

Movant, LYN MICHAELS, appeared in person and by attorney of record. Respondent, FRANK JOSEPH SEDDIO, JR., appeared in person and by attorney of record.

A jury was waived and the Court proceeded to consider all written response and the evidence and argument of counsel and find and Order as follows:

The Court finds that all prerequisites of law have been legally satisfied and that this Court has jurisdiction over the parties and subject matter contained herein.

IT IS ORDERED that the Motion for Enforcement is hereby granted.

The Court finds that FRANK JOSEPH SEDDIO, JR. has failed to pay to LYN MICHAELS money that was awarded in the prior decree and that the amount of unpaid payments to which LYN MICHAELS is, as of July 17, 1997, entitled is $9347.66.

IT IS ORDERED that LYN MICHAELS is granted judgment against FRANK JOSEPH SEDDIO, JR. in the amount of $9347.66, such judgment bearing interest at 10 percent per annum compounded annually from the date this order is signed, for which let execution issue, if not timely paid.

IT IS FURTHER ORDERED AND DECREED that LYN MICHAELS is granted judgment against FRANK JOSEPH SEDDIO, JR. in the amount of $3423.63 for attorney's fees, such judgment bearing interest at 10 percent per annum compounded annually from the date this order is signed until paid, for which let execution issue if not timely paid.

IT IS FURTHER ORDERED AND DECREED that costs of court are taxed against FRANK JOSEPH SEDDIO, JR., and FRANK JOSEPH SEDDIO, JR., is ORDERED to pay those costs.

All relief not specifically granted herein is denied.

Signed this 9 day of September 1997.

SIGNED
JUDGE PRESIDING

APPROVED AS TO FORM ONLY:

SIGNED	SIGNED
JILL O'CONNELL	RICHARD TANNER
Attorney for Movant	Attorney for Respondent

NO. 89-3400-367

IN THE MATTER OF THE MARRIAGE OF	)	IN THE DISTRICT COURT
LYN LARAINE (OTT) SEDDIO MICHAELS PETITIONER	)	IN AND FOR DENTON COUNTY, TEXAS
AND	)	
FRANK JOSEPH SEDDIO) JR. RESPONDENT	)	367th JUDICIAL DISTRICT

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

In response to the request of Respondent, the Court makes and files the following as original Findings of Fact and Conclusions of Law in accordance with Rules 296 and 297 of the Texas Rules of Civil Procedure.

FINDINGS OF FACT

1. LYN LARAINE MICHAELS, Movant and FRANK JOSEPH SEDDIO, JR., Respondent were married June 30, 1962.

2. On February 19, 1991, an Agreed Final Judgment and Decree of Divorce and Binding Contractual Property Settlement Agreement of the Parties was entered.

3. Both LYN LARAINE MICHAELS and FRANK JOSEPH SEDDIO, JR. signed the Agreed Final Judgment and Decree of Divorce and Binding Contractual Property Settlement Agreement of the Parties.

4. FRANK JOSEPH SEDDIO, JR. agreed to pay LYN LARAINE MICHAELS 50% of the monthly amount that a Master Sergeant with 20 years of service would receive on the day that FRANK JOSEPH SEDDIO, JR. begins to receive his retirement, together with the same percentage of any and all cost-of-living-

related increases to which FRANK JOSEPH SEDDIO, JR. shall become entitled for the period beginning on the date of retirement and ending on the death of FRANK JOSEPH SEDDIO, JR.

4. FRANK JOSEPH SEDDIO, JR. was designated within the divorce decree as a constructive trustee for the benefit of LYN LARAINE MICHAELS.

5. FRANK JOSEPH SEDDIO, JR. did not pay to LYN LARAINE MICHAELS the money that was awarded to her pursuant to the property settlement agreement.

6. FRANK JOSEPH SEDDIO, JR. failed to pay to LYN LARAINE MICHAELS the balance of the 50%, each month, that was awarded to her, after the Air Force had paid her a direct amount each month.

7. The Agreed Final Judgment and Decree of Divorce and Binding Contractual Property Settlement Agreement of the Parties contained the provision that the terms within the decree were "... absolutely contractually binding on both Parties to the Agreement, all as contained in this 'Agreed Final Decree of Divorce And Contractually Binding Property Settlement Agreement'."

8. The unpaid amount that LYN LARAINE MICHAELS is entitled to as of July 17, 1997, is $9347.66.

9. Any finding of fact that is a conclusion of law shall be deemed a conclusion of law.

CONCLUSIONS OF LAW

1. The Motion to Enforce filed by LYN LARAINE MICHAELS is in due form and contains all the allegations required by law.

2. This Court has jurisdiction of the parties and of the subject matter of this cause.

3. FRANK JOSEPH SEDDIO JR's agreement to pay LYN LARAINE MICHAELS 50% of the monthly amount that a Master Sergeant with 20 years of service would receive on the day that FRANK JOSEPH SEDDIO, JR. begins to receive his retirement, together with the same percentage of any and all cost-of-living-related increases to which FRANK JOSEPH SEDDIO, JR. shall become entitled for the period beginning on the date of retirement and ending on the death of FRANK JOSEPH SEDDIO, JR., was not appealed and is therefore the law of the case.

4. FRANK JOSEPH SEDDIO, JR. breached his fiduciary duty to LYN LARAINE MICHAELS by failing to account and deliver within 3 days of receipt of his retirement payments the sums due to LYN LARAINE MICHAELS.

5. FRANK JOSEPH SEDDIO, JR. is indebted to LYN LARAINE MICHAELS in the amount of $9347.66, as of July 17, 1997, bearing interest at 10 percent per annum if not timely paid.

6. LYN LARAINE MICHAELS is entitled to reasonable attorney's fees in the amount of $3423.63, plus 10 percent interest per annum from September 9, 1997 until paid.

7. Attorney's fees in the amount of $3423.63 were reasonable and necessary.

7. The division of military retirement benefits is enforceable as a property settlement agreement.

8. The rules of contract law therefore apply to the agreed upon division of military retirement.

9. This Court has the power to enforce property settlement agreements.

10. This Court has the authority to enforce property settlement agreements that involve military retirement and disability benefits.

11. Mansell v. Mansell 490 U.S. 581, 109 S.Ct. 2023, 104 L. Ed. 2d 675 (1989) is distinguished from this case, because Mansell did not decide the issue of whether the state court may enforce an agreement between the parties even if it involves payment from disability benefits.

Signed this 17 day of 0ctober, 1997.

_____SIGNED_____
JUDGE PRESIDING

COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 2-97-372-CV

Frank Joseph Seddio, Jr	From the 367th District Court of Denton County (89-3400-367)
vs.	August 28, 1998
	Opinion by Justice Livingston
Lyn Ott Michaels	(nfp)

JUDGMENT

This Court has considered the record on appeal in this case and is of the opinion that there was no error in the judgment of the trial court. It is ordered, adjudged, and decreed that the judgment of the trial court is affirmed.

It is further ordered that Frank Joseph Seddio, Jr. pay all costs of this appeal for which let execution issue.

TL

COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 2-97-372-CV

FRANK JOSEPH SEDDIO, JR. APPELLANT
VS.
LYN OTT MICHAELS APPELLEE

FROM THE 367TH DISTRICT COURT OF DENTON COUNTY

OPINION

I. INTRODUCTION

Appellant Frank Joseph Seddio, Jr. (Frank) appeals from the trial court's granting of appellee Lyn Ott Michaels's (Lyn) motion for enforcement of a divorce decree. In four points, Frank contends the trial court erred in: (1) awarding Lyn a portion of his Veterans' Administration (VA) disability benefits; (2) overruling his statute of limitations defense; (3) granting Lyn attorney 's fees; and (4) not granting him attorney's fees. We affirm the trial court's judgment.

II. FACTUAL BACKGROUND

Frank and Lyn married on June 30, 1962. On February 19, 1991, they obtained a divorce pursuant to their agreed final judgment and decree of divorce and binding contractual property settlement agreement (the agreement). The agreement was drafted by Frank's and Lyn's respective attorneys. The trial court did not have a hand in the disposition of the couple's property. It merely approved the agreement. The agreement provided that Lyn was entitled to receive from Frank "a monthly amount of money equal to fifty (50%) percent of that monthly amount that a retired Master Sergeant, with twenty (20) years' of service will receive on the date [Frank] begins to receive his retirement."

Lyn received several payments from, Frank, then began. receiving direct payment from the Department of Defense for fifty percent of what was later determined to be Frank's United States Air Force disposable retirement retainer pay. Thus, Lyn did not

receive any money from Frank's VA disability pay, which constituted 10% of his retirement at the time he retired. As Frank's disability entitlement increased to 60% of his retirement, he waived his retirement benefits in order to take the money in the form of disability payments. The amount of his disposable retirement pay decreased accordingly. As a result, in September 1995, the monthly amount Lyn received diminished from $453.00 to $164.50. Her payment later fell to $61.50 in March 1996.

In May 1996, Lyn moved for enforcement of the decree of divorce complaining that she was not receiving fifty percent of Frank's gross retirement pay as required by the agreement. The crux of Lyn's argument was that Frank's VA disability pay should be factored into the award under the agreement. The trial court held a hearing on the motion on July 17, 1996. On September 9, 1997, the trial court granted the motion for enforcement and awarded Lyn $9,347.66 in unpaid payments and $3,423.63 in attorney's fees. Frank filed a motion for new trial, which was overruled. The trial court filed its findings of fact and conclusions of law on October 21, 1997. Conclusion of law number 11 states:

> *Mansell v. Mansell, 490* U.S. 581, 109 S. Ct. 2023, 104 L. Ed. 2d 675 (1989) is distinguished from this case, because *Mansell did* not decide the issue of whether the state court may enforce an agreement between the parties even if it involves payment from disability benefits.

III. DISCUSSION

A. Standard of Review

Findings of fact entered in a case tried to the court are of the same force and dignity as a jury's answers to jury questions. *See Anderson v. City of Seven Points,* 806 S.W.2d 791, 794 (Tex. 1991). The trial court's findings of fact are reviewable for legal and factual sufficiency of the evidence to support them by the same standards that are applied in reviewing evidence supporting a jury's answer. *See Ortiz* v. *Jones, 917* S-W.2d 770, 772 (Tex. 1996). Conclusions of law may not be challenged for factual sufficiency, but conclusions of law may be reviewed to determine their correctness based upon the facts. *See Forbis v. Trinity Universal Ins. Co. of Kan., Inc., 833 S-W.2d* 316, 319 (Tex. App.-Fort Worth 1992, writ denied).

B. Disability Pay

In his first point, Frank argues the portion of the agreement that purportedly awards Lyn fifty percent of all his retirement benefits is void because it attempts to award Lyn one-half of his VA disability pay in violation of the Former Spouses' Protection Act (the Act) and the United States Supreme Court's interpretation of the Act in *Mansell v. Mansell, 490 U.S. 581, 109 S. Ct. 2023 (1990). See* Department of Defense **Authorization Act of 1983, Pub.** L. No. 97-252, § 1001, 96 Stat., 730-735 (1982). Lyn argues *Mansell is* inapplicable to the case at hand because Frank and Lyn contractually split a sum certain such that the trial court never "awarded" disability payments to Lyn in contravention of *Mansell.*

In Mansell, Gerald and Gaye Mansell entered into a property settlement agreement that required Gerald to pay Gaye "50 percent of his total military retirement pay, including that portion of retirement pay waived so that [Gerald) could receive disability payments." *Mansell, 490 U.S. at 585-86, 109 S. Ct.* at 2025. Gerald moved for modification of the divorce decree to strike the provision requiring him to share his total retirement pay with Gaye. Id. at 586, 109 S. Ct. at 2025-26. The trial court denied the request for modification and the case reached the United States Supreme Court on the issue of whether the California state court could apply its own marital property laws to divide veterans' disability benefits in a divorce partition proceeding. Id. at 585, 109 S. Ct. at 2025; Wallace v. Fuller, 832 S-W.2d 714, 716-18 (Tex. App.-Austin 1992, no writ) (providing historical look at a Texas trial court's ability to divide military retirement benefits).

The *Mansell Court* held that the California state court was preempted from applying its community property laws to divide the portion of Gerald's retirement pay that was waived to secure VA disability benefits. *Mansell, 490 U.S. at 594-95, 109 S. Ct.* at 2031-32 (holding that state courts only have authority to treat "disposable retired pay" as marital property and the Act excludes disability benefits from its definition of "disposable retired pay"); Wallace, 832 S.W-2d at 716-18 (acknowledging that federal law preempted the Texas state court from applying its own community property laws to divide the military disability payments in a partition proceeding).

> Lyn cites a Florida Supreme Court case, *Abernethy v. Fishkin, 699 So.2d* 235 (Fla. 1997), to support her proposition that *Mansell* does not prevent a divorcing couple from entering into a settlement agreement to divide all retirement benefits. *In Abernethy,* Richard and Monica Abernethy entered into a property settlement agreement in which Richard, who had not yet retired, gave Monica twenty-five percent of his Air Force retirement pay. Id. at 237.

The settlement agreement was later incorporated into a final judgment of dissolution of marriage, with the change that Monica would be entitled to twenty-five percent of Richard's "net disposable retired or retainer pay." Id. Some time after he retired, Richard waived a portion of his retirement in favor of VA disability benefits, and Monica moved to receive a portion of Richard's **total** benefits. Id. at 238. The trial court granted Monica's motion, but the intermediate appellate court reversed. Id. at 238-39. Although the Florida Supreme- Court concluded that "division of veterans' disability benefits, whether through court order or settlement agreement, are preempted by federal law, it found that Monica "is entitled to receive payments equal to the amount she was receiving before [Richard] elected veterans' disability payments." Id. at 239. The court reasoned that Richard was not receiving disability payments when he and Monica entered into the settlement agreement and the agreement itself contained an indemnification clause that ensured Monica would receive level payments by precluding Richard from shifting retirement payments to avoid paying Monica her due under the agreement. *See id. at 239-40.* Because the indemnification provision did not specify what assets would be used to keep Monica's payments level (i.e., it did not say he had to pay her out of his disability benefits), the court reasoned the final judgment did not violate *Mansell. Id. at 239-40.* Consequently, the court held that Id. at 240. [While federal law prohibits the division of disability benefits, it does not prohibit spouses from entering into a property settlement agreement that awards the non-military spouse a set portion of the military spouse's retirement pay. Nor does it preclude indemnification provisions ensuring such payments-, so long as veterans' disability benefits are not the source of such payments.

Here, we have a property settlement agreement purporting to award: [A] monthly amount of money equal to fifty (50%) percent of that monthly amount that a retired Master Sergeant, with twenty (20) years' of service will receive on the date [Frank] begins to receive his retirement.

We find that, as in *Abernethy,* the property settlement agreement awards a sum certain that is unaffected by Frank's decision to waive retirement pay in favor of VA disability pay. *See* id. In other words, the property settlement effectively renders Frank's waiver irrelevant for purposes of the amount due Lyn because the parties contracted to tie the award to the amount "a retired Master Sergeant, with twenty (20) years' of service" would receive, not the amount that Frank actually received. In addition, as in *Abernethy,* the agreement contains an indemnification clause that ensures reimbursement, or satisfaction, upon the entry of a judgment against one of the parties arising from the agreement. *See* id. Moreover, the indemnification clause does not specify the source of the amounts due. *See id.*

Although we recognize that *Mansell* also involved a property settlement entered into by the parties prior to court approval, we believe the case at hand is distinguishable because of this unique agreement. Whereas the Mansells' agreement expressly divided Gerald's VA disability benefits in contravention of the Act, Frank and Lyn merely contracted to divide a definite amount, irrespective of ancillary or subsequent occurrences such as we have here. *See Mansell, 490 U.S. at 585-86, 109 S. Ct.* at 2025. For these reasons, we overrule Frank's first point.

C. Statute of Limitations

In his second point, Frank argues the trial court erred in not applying the statute of limitations to Lyn's claims. However, the record reveals that Frank failed to preserve error concerning this point because he never raised this issue at the hearing or in his motion for new trial. Texas Rule of Appellate Procedure 33.1 states:

(a) In general. As a prerequisite to presenting a complaint

for appellate review, the record must show that:
(1) the complaint was made to the trial court by a timely request, objection, or motion that: , (A) stated the grounds for the ruling that the complaining party sought from the trial court with sufficient specificity to make the trial court aware of the complaint, unless the specific grounds were apparent from the context; and (B) complied with the requirements of the Texas Rule of Civil or Criminal Evidence or the Texas Rules of Civil or Appellate Procedure; and

(2) the trial court:
(A) ruled on the request, objection, or motion, either expressly or implicitly; or
(B) refused to rule on the request, objection, or motion, and the complaining party objected to the refusal.

TEX. R. App. P. 33.1 (a).

Here, there is nothing in the record to show that Frank ever raised his statute of limitations defense in the trial court. Frank included the statute of limitations defense in a laundry list of defenses in his second amended original answer, but he never raised the issue at the hearing or in his motion for new trial. Thus, Frank failed to adequately preserve error. If a party fails to comply with rule 33. 1, error is not preserved, and the complaint is waived. *See Bushell v. Dean, 803 S.W.2d 711, 712 (Tex. 1991) (op. on* reh'g) (construing former rule 52). Therefore, we find that Frank waived error concerning his statute of limitations defense. We overrule Frank's second point.

D. Attorney's Fees

In his third and fourth points, Frank argues the trial court erred in: (1) granting Lyn attorney's fees because it should not have granted the motion to enforce; and (2) not granting him attorney I s fees because he successfully defended the motion to enforce.

Frank does not contest the availability of attorney's fees or the amount of attorney's fees awarded. Thus, because of our disposition of point one, we overrule Frank's third and fourth points.

IV. CONCLUSION

We affirm the trial court's judgment.

TERRI LIVINGSTON
PANEL A: CAYCE, C.J., LIVINGSTON, and RICHARDS, JJ

DO NOT PUBLISH
TEX. R. App. P. 47.3(a)

AUG 2 8 1998

COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 2-97-372-CV

FRANK JOSEPH SEDDIO, JR. APPELLANT

VS.

LYN OTT MICHAELS APPELLEE

FROM THE 367th DISTRICT COURT OF DENTON COUNTY

ORDER

We have considered the appellant's "Motion For Rehearing."

It is the opinion of the court that said motion for rehearing should be and is hereby denied and that the opinion and judgment of August 28, 1998, stand unchanged.

The clerk of this Court is directed to transmit a copy of this order to the attorneys of record.

SIGNED THIS 15th day of October, 1998.

TERRIE LIVINGSTON
JUSTICE

PANEL A: CAYCE, C.J.; LIVINGSTON, and RICHARDS, JJ.

THE SUPREME COURT OF TEXAS
Post Office Box 12248
Austin, Texas 78711 (512) 463-1312

November 18, 1999

Mr. Thomas V. Murto, III
Stadley & Wright
9330 LBJ Freeway, Suite 1400
Dallas, TX 75243

Ms. Jill Elizabeth Tate O'Connell
Morris & Morris
900 Parker Square, Suite 235
Flower Mound, TX 75028

RE: Case Number 98-1179
Court of Appeals Number: 02-97-00372-CV
Trial Court Number: 89-3400-367

Style: FRANK JOSEPH SEDDIO, JR.
V.
LYN OTT MICHAEL

Dear Counsel:

Today, the Supreme Court of Texas denied the petition for review in the above styled case.

Sincerely,

John T. Adams Clerk

By Tanya R. Hunter, Deputy Clerk

Cc: Ms. Stephanie Lavake, Clerk
Ms. Tracy Kunkel

Subj: Re: Former Spouses' Protection Act
Date: 02/08/2000 11:32:34 AM Central Standard Time
From: DEE.DACOSTA@DFAS.MIL
To: RBTCTT@aol.com

Mr. Tanner
There is a system generated report with this information. Total number of former spouses paid in January 2000 was 57,056.

While I cannot give you a direct count for additions for 1999, I can tell you that in January 1999 the number paid was 52,569.

This is a monthly report that tallies all payments and totals are affected by accounts suspended or terminated as well as by accounts added.

Hope this answers your question. If you have questions, don't hesitate to ask.
DeeDaCosta

Sec. 1408. Payment of retired or retainer pay in compliance with court orders

- (a) Definitions. - In this section:
  - (1) The term "court" means -
    - (A) any court of competent jurisdiction of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;
    - (B) any court of the United States (as defined in section 451 of title 28) having competent jurisdiction;
    - (C) any court of competent jurisdiction of a foreign country with which the United States has an agreement requiring the United States to honor any court order of such country; and
      (D) any administrative or judicial tribunal of a State competent to enter orders for support or maintenance (including a State agency administering a program under a State plan approved under part D of title IV of the Social Security Act), and, for purposes of this subparagraph, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.
  - (2) The term "court order" means a final decree of divorce, dissolution, annulment, or legal separation issued by a court, or a court ordered, ratified, or approved property settlement incident to such a decree (including a final decree modifying the terms of a previously issued decree of divorce, dissolution, annulment, or legal separation, or a court ordered, ratified, or approved property settlement incident to such previously issued decree), or a support order, as defined in

section 453(p) of the Social Security Act (42 U.S.C. 653(p)), which -

- (A) is issued in accordance with the laws of the jurisdiction of that court;
- (B) provides for -
  - (i) payment of child support (as defined in section 459(i)(2) of the Social Security Act (42 U.S.C. 659(i)(2)));
  - (ii) payment of alimony (as defined in section 459(i)(3) of the Social Security Act (42 U.S.C. 659(i)(3))); or
  - (iii) division of property (including a division of community property); and (C) in the case of a division of property, specifically provides for the payment of an amount, expressed in dollars or as a percentage of disposable retired pay, from the disposable retired pay of a member to the spouse or former spouse of that member.

- (3) The term "final decree" means a decree from which no appeal may be taken or from which no appeal has been taken within the time allowed for taking such appeals under the laws applicable to such appeals, or a decree from which timely appeal has been taken and such appeal has been finally decided under the laws applicable to such appeals.
- (4) The term "disposable retired pay" means the total monthly retired pay to which a member is entitled less amounts which -
  - (A) are owed by that member to the United States for previous overpayments of retired pay and for recoupments

required by law resulting from entitlement to retired pay;

- (B) are deducted from the retired pay of such member as a result of forfeitures of retired pay ordered by a court-martial or as a result of a waiver of retired pay required by law in order to receive compensation under title 5 or title 38;
- (C) in the case of a member entitled to retired pay under chapter 61 of this title, are equal to the amount of retired pay of the member under that chapter computed using the percentage of the member's disability on the date when the member was retired (or the date on which the member's name was placed on the temporary disability retired list); or
- (D) are deducted because of an election under chapter 73 of this title to provide an annuity to a spouse or former spouse to whom payment of a portion of such member's retired pay is being made pursuant to a court order under this section.

- (5) The term "member" includes a former member entitled to retired pay under section 12731 of this title.
- (6) The term "spouse or former spouse" means the husband or wife, or former husband or wife, respectively, of a member who, on or before the date of a court order, was married to that member.
- (7) The term "retired pay" includes retainer pay.

- (b) Effective Service of Process. - For the purposes of this section -
  - (1) service of a court order is effective if -
    - (A) an appropriate agent of the Secretary concerned designated for receipt of service of court orders under regulations prescribed pursuant to

subsection (i) or, if no agent has been so designated, the Secretary concerned, is personally served or is served by facsimile or electronic transmission or by mail;

- (B) the court order is regular on its face;
- (C) the court order or other documents served with the court order identify the member concerned and include, if possible, the social security number of such member; and
(D) the court order or other documents served with the court order certify that the rights of the member under the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 501 et seq.) were observed; and
(2) a court order is regular on its face if the order -
- (A) is issued by a court of competent jurisdiction;
- (B) is legal in form; and
(C) includes nothing on its face that provides reasonable notice that it is issued without authority of law.

- (c) Authority for Court To Treat Retired Pay as Property of the Member and Spouse. - (1) Subject to the limitations of this section, a court may treat disposable retired pay payable to a member for pay periods beginning after June 25, 1981, either as property solely of the member or as property of the member and his spouse in accordance with the law of the jurisdiction of such court. A court may not treat retired pay as property in any proceeding to divide or partition any amount of retired pay of a member as the property of the member and the member's spouse or former spouse if a final decree of divorce, dissolution, annulment, or legal separation (including a court ordered, ratified, or approved property settlement incident to such decree) affecting the member and the member's spouse or former spouse (A) was issued before June 25, 1981, and (B) did

not treat (or reserve jurisdiction to treat) any amount of retired pay of the member as property of the member and the member's spouse or former spouse.

- (2) Notwithstanding any other provision of law, this section does not create any right, title, or interest which can be sold, assigned, transferred, or otherwise disposed of (including by inheritance) by a spouse or former spouse. Payments by the Secretary concerned under subsection (d) to a spouse or former spouse with respect to a division of retired pay as the property of a member and the member's spouse under this subsection may not be treated as amounts received as retired pay for service in the uniformed services.
- (3) This section does not authorize any court to order a member to apply for retirement or retire at a particular time in order to effectuate any payment under this section.
- (4) A court may not treat the disposable retired pay of a member in the manner described in paragraph (1) unless the court has jurisdiction over the member by reason of (A) his residence, other than because of military assignment, in the territorial jurisdiction of the court, (B) his domicile in the territorial jurisdiction of the court, or (C) his consent to the jurisdiction of the court.

- (d) Payments by Secretary Concerned to (or for Benefit of) Spouse or Former Spouse. - (1) After effective service on the Secretary concerned of a court order providing for the payment of child support or alimony or, with respect to a division of property, specifically providing for the payment of an amount of the disposable retired pay from a member to the spouse or a former spouse of the member, the Secretary shall make payments (subject to the limitations of this section) from the disposable retired pay of the member to the spouse or former spouse (or for the benefit of such spouse or former spouse to a State disbursement unit established pursuant to section 454B of the Social Security Act or other public payee designated by a State, in accordance with part D of title IV of the Social

Security Act, as directed by court order, or as otherwise directed in accordance with such part D) in an amount sufficient to satisfy the amount of child support and alimony set forth in the court order and, with respect to a division of property, in the amount of disposable retired pay specifically provided for in the court order. In the case of a spouse or former spouse who, pursuant to section 408(a)(3) of the Social Security Act (42 U.S.C. 608(a)(4)), assigns to a State the rights of the spouse or former spouse to receive support, the Secretary concerned may make the child support payments referred to in the preceding sentence to that State in amounts consistent with that assignment of rights. In the case of a member entitled to receive retired pay on the date of the effective service of the court order, such payments shall begin not later than 90 days after the date of effective service. In the case of a member not entitled to receive retired pay on the date of the effective service of the court order, such payments shall begin not later than 90 days after the date on which the member first becomes entitled to receive retired pay.

- (2) If the spouse or former spouse to whom payments are to be made under this section was not married to the member for a period of 10 years or more during which the member performed at least 10 years of service creditable in determining the member's eligibility for retired pay, payments may not be made under this section to the extent that they include an amount resulting from the treatment by the court under subsection (c) of disposable retired pay of the member as property of the member or property of the member and his spouse.
- (3) Payments under this section shall not be made more frequently than once each month, and the Secretary concerned shall not be required to vary normal pay and disbursement cycles for retired pay in order to comply with a court order.
- (4) Payments from the disposable retired pay of a member pursuant to this section shall terminate in accordance with the terms of the applicable court

order, but not later than the date of the death of the member or the date of the death of the spouse or former spouse to whom payments are being made, whichever occurs first.

- (5) If a court order described in paragraph (1) provides for a division of property (including a division of community property) in addition to an amount of child support or alimony or the payment of an amount of disposable retired pay as the result of the court's treatment of such pay under subsection (c) as property of the member and his spouse, the Secretary concerned shall pay (subject to the limitations of this section) from the disposable retired pay of the member to the spouse or former spouse of the member, any part of the amount payable to the spouse or former spouse under the division of property upon effective service of a final court order of garnishment of such amount from such retired pay.
- (6) In the case of a court order for which effective service is made on the Secretary concerned on or after the date of the enactment of this paragraph and which provides for payments from the disposable retired pay of a member to satisfy the amount of child support set forth in the order, the authority provided in paragraph (1) to make payments from the disposable retired pay of a member to satisfy the amount of child support set forth in a court order shall apply to payment of any amount of child support arrearages set forth in that order as well as to amounts of child support that currently become due.
- (7)
    - (A) The Secretary concerned may not accept service of a court order that is an out-of-State modification, or comply with the provisions of such a court order, unless the court issuing that order has jurisdiction in the manner specified in subsection

(c)(4) over both the member and the spouse or former spouse involved.

- (B) A court order shall be considered to be an out-of-State modification for purposes of this paragraph if the order
  - (i) modifies a previous court order under this section upon which payments under this subsection are based; and (ii) is issued by a court of a State other than the State of the court that issued the previous court order.

- (e) Limitations. - (1) The total amount of the disposable retired pay of a member payable under all court orders pursuant to subsection (c) may not exceed 50 percent of such disposable retired pay.
  - (2) In the event of effective service of more than one court order which provide for payment to a spouse and one or more former spouses or to more than one former spouse, the disposable retired pay of the member shall be used to satisfy (subject to the limitations of paragraph (1)) such court orders on a first-come, first-served basis. Such court orders shall be satisfied (subject to the limitations of paragraph (1)) out of that amount of disposable retired pay which remains after the satisfaction of all court orders which have been previously served.
  - (3)
    - (A) In the event of effective service of conflicting court orders under this section which assert to direct that different amounts be paid during a month to the same spouse or former spouse of the same member, the Secretary concerned shall -
      - (i) pay to that spouse from the member's disposable retired pay the least amount directed to be paid during that month by any

such conflicting court order, but not more than the amount of disposable retired pay which remains available for payment of such court orders based on when such court orders were effectively served and the limitations of paragraph (1) and subparagraph (B) of paragraph (4);

- (ii) retain an amount of disposable retired pay that is equal to the lesser of -
- (I) the difference between the largest amount required by any conflicting court order to be paid to the spouse or former spouse and the amount payable to the spouse or former spouse under clause (i); and (II) the amount of disposable retired pay which remains available for payment of any conflicting court order based on when such court order was effectively served and the limitations of paragraph (1) and subparagraph (B) of paragraph (4); and (iii) pay to that member the amount which is equal to the amount of that member's disposable retired pay (less any amount paid during such month pursuant to legal process served under section 459 of the Social Security Act (42 U.S.C. 659) and any amount paid during such month pursuant to court orders effectively served under this section, other than such conflicting court orders) minus -
- (I) the amount of disposable retired pay paid under clause (II) the amount of disposable retired pay retained under clause (ii).

- (B) The Secretary concerned shall hold the amount retained under clause (ii) of subparagraph (A) until such time as that Secretary is provided with a court order which has been certified by the member and the spouse or former spouse to be valid and applicable to the retained amount. Upon being provided with such an order, the Secretary shall pay the retained amount in accordance with the order.

-
- (4)
  - (A) In the event of effective service of a court order under this section and the service of legal process pursuant to section 459 of the Social Security Act (42 U.S.C. 659), both of which provide for payments during a month from the same member, satisfaction of such court orders and legal process from the retired pay of the member shall be on a first-come, first-served basis. Such court orders and legal process shall be satisfied out of moneys which are subject to such orders and legal process and which remain available in accordance with the limitations of paragraph (1) and subparagraph (B) of this paragraph during such month after the satisfaction of all court orders or legal process which have been previously served.
  - (B) Notwithstanding any other provision of law, the total amount of the disposable retired pay of a member payable by the Secretary concerned under all court orders pursuant to this section and all legal processes pursuant to section 459 of the Social Security Act (42 U.S.C. 659) with respect to a member may not exceed 65

percent of the amount of the retired pay payable to such member that is considered under section 462 of the Social Security Act (42 U.S.C. 662) to be remuneration for employment that is payable by the United States.

- (5) A court order which itself or because of previously served court orders provides for the payment of an amount which exceeds the amount of disposable retired pay available for payment because of the limit set forth in paragraph (1), or which, because of previously served court orders or legal process previously served under section 459 of the Social Security Act (42 U.S.C. 659), provides for payment of an amount that exceeds the maximum amount permitted under paragraph (1) or subparagraph (B) of paragraph (4), shall not be considered to be irregular on its face solely for that reason. However, such order shall be considered to be fully satisfied for purposes of this section by the payment to the spouse or former spouse of the maximum amount of disposable retired pay permitted under paragraph (1) and subparagraph (B) of paragraph (4).
- (6) Nothing in this section shall be construed to relieve a member of liability for the payment of alimony, child support, or other payments required by a court order on the grounds that payments made out of disposable retired pay under this section have been made in the maximum amount permitted under paragraph (1) or subparagraph (B) of paragraph (4). Any such unsatisfied obligation of a member may be enforced by any means available under law other than the means provided under this section in any case in which the maximum amount permitted under paragraph (1) has been paid and under section 459 of the Social Security Act (42 U.S.C. 659) in any case in which the maximum amount permitted under subparagraph (B) of paragraph (4) has been paid.

- (f) Immunity of Officers and Employees of United States. - (1) The United States and any officer or employee of the United States shall not be liable with respect to any payment made from retired pay to any member, spouse, or former spouse pursuant to a court order that is regular on its face if such payment is made in accordance with this section and the regulations prescribed pursuant to subsection (i).
    - (2) An officer or employee of the United States who, under regulations prescribed pursuant to subsection (i), has the duty to respond to interrogatories shall not be subject under any law to any disciplinary action or civil or criminal liability or penalty for, or because of, any disclosure of information made by him in carrying out any of his duties which directly or indirectly pertain to answering such interrogatories.
- (g) Notice to Member of Service of Court Order on Secretary Concerned. - A person receiving effective service of a court order under this section shall, as soon as possible, but not later than 30 days after the date on which effective service is made, send a written notice of such court order (together with a copy of such order) to the member affected by the court order at his last known address.
- (h) Benefits for Dependents Who Are Victims of Abuse by Members Losing Right to Retired Pay. - (1) If, in the case of a member or former member of the armed forces referred to in paragraph (2)(A), a court order provides (in the manner applicable to a division of property) for the payment of an amount from the disposable retired pay of that member or former member (as certified under paragraph (4)) to an eligible spouse or former spouse of that member or former member, the Secretary concerned, beginning upon effective service of such court order, shall pay that amount in accordance with this subsection to such spouse or former spouse.
    - (2) A spouse or former spouse of a member or former member of the armed forces is eligible to receive payment under this subsection if -

- (A) the member or former member, while a member of the armed forces and after becoming eligible to be retired from the armed
forces on the basis of years of service, has eligibility to receive retired pay terminated as a result of misconduct while a member involving abuse of a spouse or dependent child (as defined in regulations prescribed by the Secretary of Defense or, for the Coast Guard when it is not operating as a service in the Navy, by the Secretary of Transportation); and (B) the spouse or former spouse -

- (i) was the victim of the abuse and was married to the member or former member at the time of that abuse; or
- (ii) is a natural or adopted parent of a dependent child of the member or former member who was the victim of the abuse.

- (3) The amount certified by the Secretary concerned under paragraph (4) with respect to a member or former member of the armed forces referred to in paragraph (2)(A) shall be deemed to be the disposable retired pay of that member or former member for the purposes of this subsection.
- (4) Upon the request of a court or an eligible spouse or former spouse of a member or former member of the armed forces referred to in paragraph (2)(A) in connection with a civil action for the issuance of a court order in the case of that member or former member, the Secretary concerned shall determine and certify the amount of the monthly retired pay that the member or former member would have been entitled to receive as of the date of the certification -
  - (A) if the member or former member's eligibility for retired pay had not been terminated as described in paragraph (2)(A); and (B) if, in the case of a member

or former member not in receipt of retired pay immediately before that termination of eligibility

for retired pay, the member or former member had retired on the effective date of that termination of eligibility.

- (5) A court order under this subsection may provide that whenever retired pay is increased under section 1401a of this title (or any other provision of law), the amount payable under the court order to the spouse or former spouse of a member or former member described in paragraph (2)(A) shall be increased at the same time by the percent by which the retired pay of the member or former member would have been increased if the member or former member were receiving retired pay.
- (6) Notwithstanding any other provision of law, a member or former member of the armed forces referred to in paragraph (2)(A) shall have no ownership interest in, or claim against, any amount payable under this section to a spouse or former spouse of the member or former member.
- (7)
    - (A) If a former spouse receiving payments under this subsection with respect to a member or former member referred to in paragraph (2)(A) marries again after such payments begin, the eligibility of the former spouse to receive further payments under this subsection shall terminate on the date of such marriage.
    - (B) A person's eligibility to receive payments under this subsection that is terminated under subparagraph (A) by reason of remarriage shall be resumed in the event of the termination of that marriage by the death of that person's spouse or by annulment or divorce. The

resumption of payments shall begin as of the first day of the month in which that marriage is so terminated. The monthly amount of the payments shall be the amount that would have been paid if the continuity of the payments had not been interrupted by the marriage.

- (8) Payments in accordance with this subsection shall be made out of funds in the Department of Defense Military Retirement Fund established by section 1461 of this title or, in the case of the Coast Guard, out of funds appropriated to the Department of Transportation for payment of retired pay for the Coast Guard.
- (9)
  - (A) A spouse or former spouse of a member or former member of the armed forces referred to in paragraph (2)(A), while receiving payments in accordance with this subsection, shall be entitled to receive medical and dental care, to use commissary and exchange stores, and to receive any other benefit that a spouse or a former spouse of a retired member of the armed forces is entitled to receive on the basis of being a spouse or former spouse, as the case may be, of a retired member of the armed forces in the same manner as if the member or former member referred to in paragraph (2)(A) was entitled to retired pay.
  - (B) A dependent child of a member or former member referred to in paragraph (2)(A) who was a member of the household of the member or former member at the time of the misconduct described in paragraph (2)(A) shall be entitled to receive medical and dental care, to use commissary and exchange stores, and to have other benefits provided to

dependents of retired members of the armed forces in the same manner as if the member or former member referred to in paragraph (2)(A) was entitled to retired pay.

- (C) If a spouse or former spouse or a dependent child eligible or entitled to receive a particular benefit under this paragraph is eligible or entitled to receive that benefit under another provision of law, the eligibility or entitlement of that spouse or former spouse or dependent child to such benefit shall be determined under such other provision of law instead of this paragraph.

- (10)
  - (A) For purposes of this subsection, in the case of a member of the armed forces who has been sentenced by a court-martial to receive a punishment that will terminate the eligibility of that member to receive retired pay if executed, the eligibility of that member to receive retired pay may, as determined by the Secretary concerned, be considered terminated effective upon the approval of that sentence by the person acting under section 860(c) of this title (article 60(c) of the Uniform Code of Military Justice).
  - (B) If each form of the punishment that would result in the termination of eligibility to receive retired pay is later remitted, set aside, or mitigated to a punishment that does not result in the termination of that eligibility, a payment of benefits to the eligible recipient under this subsection that is based on the punishment so vacated, set aside, or mitigated shall cease. The cessation of payments shall be effective as of the first

day of the first month following the month in which the Secretary concerned notifies the recipient of such benefits in writing that payment of the benefits will cease. The recipient may not be required to repay the benefits received before that effective date (except to the extent necessary to recoup any amount that was erroneous when paid).

- (11) In this subsection, the term "dependent child", with respect to a member or former member of the armed forces referred to in paragraph (2)(A), means an unmarried legitimate child, including an adopted child or a stepchild of the member or former member, who -
  - (A) is under 18 years of age;
  - (B) is incapable of self-support because of a mental or physical incapacity that existed before becoming 18 years of age and is dependent on the member or former member for over one-half of the child's support; or
  - (C) if enrolled in a full-time course of study in an institution of higher education recognized by the Secretary of Defense for the purposes of this subparagraph, is under 23 years of age and is dependent on the member or former member for over one-half of the child's support.
- (i) Certification Date. - It is not necessary that the date of a certification of the authenticity or completeness of a copy of a court order for child support received by the Secretary concerned for the purposes of this section be recent in relation to the date of receipt by the Secretary.
  - (j) Regulations. - The Secretaries concerned shall prescribe uniform regulations for the administration of this section.
  - (k) Relationship to Other Laws. - In any case involving an order providing for payment of child support (as defined in section 459(i)(2) of the

Social Security Act) by a member who has never been married to the other parent of the child, the provisions of this section shall not apply, and the case shall be subject to the provisions of section 459 of such Act.

Sec. 5301. Nonassignability and exempt status of benefits

- (a) Payments of benefits due or to become due under any law administered by the Secretary shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to claims of the United States arising under such laws nor shall the exemption therein contained as to taxation extend to any property purchased in part or wholly out of such payments. The provisions of this section shall not be construed to prohibit the assignment of insurance otherwise authorized under chapter 19 of this title, or of servicemen's indemnity. For the purposes of this subsection, in any case where a payee of an educational assistance allowance has designated the address of an attorney-in-fact as the payee's address for the purpose of receiving a benefit check and has also executed a power of attorney giving the attorney-in-fact authority to negotiate such benefit check, such action shall be deemed to be an assignment and is prohibited.
- (b) This section shall prohibit the collection by setoff or otherwise out of any benefits payable pursuant to any law administered by the Secretary and relating to veterans, their estates, or their dependents, of any claim of the United States or any agency thereof against (1) any person other than the indebted beneficiary or the beneficiary's estate; or (2) any beneficiary or the beneficiary's estate except amounts due the United States by such beneficiary or the beneficiary's estate by reason of overpayments or illegal payments made under such laws to such beneficiary or the beneficiary's estate or to the beneficiary's dependents as such. If the benefits referred to in the preceding sentence are insurance payable by reason of yearly renewable term insurance, United States Government life insurance, or National Service Life Insurance issued by the United States, the exemption provided in this section shall not apply to indebtedness

- (B) For the purposes of subparagraph (A) of this paragraph, as used in the second sentence of section 3716(a) of title 31 -
  - (i) the term "records of the agency" shall be considered to refer to the records of the department of the Secretary concerned; and (ii) the term "agency" in clauses (3) and (4) shall be considered to refer to such department.
- (4) Funds collected under this subsection shall be credited to the Department of Defense Military Retirement Fund under chapter 74 of title 10 or to the Retired Pay Account of the Coast Guard, as appropriate.

- (d) Notwithstanding subsection (a) of this section, payments of benefits under laws administered by the Secretary shall not be exempt from levy under subchapter D of chapter 64 of the Internal Revenue Code of 1986 (26 U.S.C. 6331 et seq.).
- (e) In the case of a person who -
  - (1) has been determined to be eligible to receive pension or compensation under laws administered by the Secretary but for the receipt by such person of pay pursuant to any provision of law providing retired or retirement pay to members or former members of the Armed Forces or commissioned officers of the National Oceanic and Atmospheric Administration or of the Public Health Service; and

    (2) files a waiver of such pay in accordance with section 5305 of this title in the amount of such pension or compensation before the end of the one-year period beginning on the date such person is notified by the Secretary of such person's eligibility for such pension or compensation, the retired or retirement pay of such person shall be exempt from taxation, as provided in subsection (a) of this section, in an amount equal to the

existing against the particular insurance contract upon the maturity of which the claim is based, whether such indebtedness is in the form of liens to secure unpaid premiums or loans, or interest on such premiums or loans, or indebtedness arising from overpayments of dividends, refunds, loans, or other insurance benefits.

- (c)
  - (1) Notwithstanding any other provision of this section, the Secretary may, after receiving a request under paragraph (2) of this subsection relating to a veteran, collect by offset of any compensation or pension payable to the veteran under laws administered by the Secretary the uncollected portion of the amount of any indebtedness associated with the veteran's participation in a plan prescribed in chapter 73 of title 10.
  - (2) If the Secretary concerned (as defined in section 101(5) of title 37) has tried under section 3711(a) of title 31 to collect an amount described in paragraph (1) of this subsection in the case of any veteran, has been unable to collect such amount, and has determined that the uncollected portion of such amount is not collectible from amounts payable by that Secretary to the veteran or that the veteran is not receiving any payment from that Secretary, that Secretary may request the Secretary to make collections in the case of such veteran as authorized in paragraph (1) of this subsection.
  - (3)
    - (A) A collection authorized by paragraph (1) of this subsection shall be conducted in accordance with the procedures prescribed in section 3716 of title 31 for administrative offset collections made after attempts to collect claims under section 3711(a) of such title.

amount of pension or compensation which would have been paid to such person but for the receipt by such person of such pay.

Sec. 5304. Prohibition against duplication of benefits

- (a)
  - (1) Except to the extent that retirement pay is waived under other provisions of law, not more than one award of pension, compensation, emergency officers', regular, or reserve retirement pay, or initial award of naval pension granted after July 13, 1943, shall be made concurrently to any person based on such person's own service or concurrently to any person based on the service of any other person.
  - (2) Notwithstanding the provisions of paragraph (1) of this subsection and of section 5305 of this title, pension under section 1521 or 1541 of this title may be paid to a person entitled to receive retired or retirement pay described in section 5305 of this title concurrently with such person's receipt of such retired or retirement pay if the annual amount of such retired or retirement pay is counted as annual income for the purposes of chapter 15 of this title.
- (b)
  - (1) Except as provided in paragraphs (2) and (3) of this subsection and in section 1521(i) of this title, the receipt of pension, compensation, or dependency and indemnity compensation by a surviving spouse, child, or parent on account of the death of any person, or receipt by any person of pension or compensation on account of such person's own service, shall not bar the payment of pension, compensation, or dependency and indemnity compensation on account of the death or disability of any other person.
  - (2) Benefits other than insurance under laws administered by the Secretary may not be paid or furnished to or on account of any child by reason of the death of more than one parent in the same parental line; however, the child may elect one or more times to receive benefits by reason of the death of any one of such parents.

- (3) Benefits other than insurance under laws administered by the Secretary may not be paid to any person by reason of the death of more than one person to whom such person was married; however, the person may elect one or more times to receive benefits by reason of the death of any one spouse.

- (c) Pension, compensation, or retirement pay on account of any person's own service shall not be paid to such person for any period for which such person receives active service pay.

Supreme Court, U.S.
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No. 99-1376

IN THE

Supreme Court of the United States

FRANK JOSEPH SEDDIO,

Petitioner,

v.

LYN MICHAELS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS, SECOND DISTRICT OF TEXAS

RESPONDENT'S BRIEF IN OPPOSITION

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Respondent, Lyn Michaels respectfully submits this Brief in Opposition to the Petition for Writ of Certiorari filed by Petitioner, Frank Joseph Seddio, Jr. seeking review of the judgment and opinion of the Court of Appeals, Second District of Texas, Fort Worth.

STATEMENT OF THE CASE

Petitioner's Statement of the Case has misstated the facts of the case. Frank and Lyn were divorced by an agreed decree of divorce on February 19, 1991. However, Petitioner has misstated and omitted several pertinent facts. The decree that was entered in this matter was not a simple divorce decree and its title reflects that. The decree was entitled as follows: "Agreed Final Judgment and Decree of Divorce and Binding Contractual Property Settlement Agreement of the Parties" (hereinafter "Agreement") to reflect the contractual nature of the agreement.

Furthermore, these parties went on to recite in detail that the Agreement was a voluntary, mutual and clearly understood contractual agreement, that each had independent legal counsel and opportunity to seek advice from independent legal counsel, that each was completely informed of the facts, had carefully, intelligently, and completely read each and every provision of the Agreement, had given careful, mature and informed thought and consideration to making the Agreement, and completely and fully understood, "for all purposes, each and every provision" of the Agreement, "both as to the subject matter therein contained and the binding legal effect of all Agreements and Orders.". Pet. App. at 24a-25a.

Additionally, Petitioner states that at the time of the divorce, Frank was retired as a master sergeant with 20 years of experience. However, Petitioner fails to mention that at the time of the divorce through the time of the hearing in the trial court on the Motion to Enforce, Frank was employed at Electronic Data Systems (EDS), Plano, Texas. Pet. at 2a, (CR 3), (RR 32).

Furthermore, the divorce decree does not contain a "QUARDO" (sic). It appears that Petitioner is referring to a Qualified Domestic Relations Order by the use of those initials. A Qualified Domestic Relations Order is a separate order entered to effectuate the division of either a defined benefit or defined contribution account in a private plan. Military retirement is not divided or paid by the Secretary of Defense by the use of a Qualified Domestic Relations Order.

REASONS FOR DENYING THE WRIT

The Petitioner presents two questions for review. The first question is whether the state courts have authority under 10 U.S.C. § 1408 to enforce an agreed divorce decree which awards a specific sum of money based in part upon retired pay that the retiree subsequently waives to receive veterans disability benefits. The second question presented asks if a state court has authority under the federal Uniformed Services Former Spouses' Protection Act, 10 U.S.C. § 1408, as interpreted in ***Mansell v. Mansell***, 490 U.S. 581, 109 S. Ct. 2023, 104 L. Ed. 2d 675 (1989), to enforce an agreed divorce decree provision which awards the former spouse a sum that is based in part upon the amount the retiree waived if the divorce decree contains a general indemnification against undisclosed debts or obligations if a military retiree

waives his retired pay to receive a VA disability benefit after a divorce. Neither of these questions is raised by the claim made by Petitioner to the Court of Appeals.

Petitioner claims that the federal question sought to be reviewed was raised by claiming that the divorce decree was void to the extent that it calculated the amount of military pay due to Lyn without regard to Franks disposable retired pay. The claim made by Petitioner was simply that the decree was void. Neither the Court of Appeals' holding nor the record below raised these questions. Neither of these questions accurately presents the issues analyzed and ruled upon in the court of appeals. The Court of Appeals has not decided an important federal question in conflict with relevant decisions of this Court. The Court of Appeals did not ignore the USFSPA, as interpreted in ***Mansell*** in its ruling and analysis. Service Members on active duty are not affected by the analysis of the Court of Appeals. There is no state court trend, and if there were, it would not be affected in any way by this case. This case is a fact specific state court case about enforcing a decree of divorce as a binding contractual property settlement agreement. The Court of Appeals', Second District of Texas, Fort Worth, analysis and ruling was correct and Respondent asks this Honorable Court to deny the petition.

I.

NEITHER THE RECORD OR THE DECISION BELOW RAISED THE QUESTIONS PRESENTED FOR REVIEW

Petitioner claims that the questions presented for review were raised in the trial court and the Court of Appeals by

Petitioner's claim that the divorce decree was void to the extent that it calculated the amount of military pay due to Lyn without regard to Frank's disposable retired pay. The only claim made by Petitioner in the lower court was simply that the decree was void.

The case below focused on Petitioner's claimed points of errors in the appeal to the Court of Appeals. The only substantive point of error argued by Petitioner and considered by the Court of Appeals was whether or not the portion of the agreement that purportedly awarded Lyn fifty percent of all Frank's retirement benefits was void. This part of the agreement purportedly attempted to award Lyn one-half of his VA disability pay. There is no evidence in the record below regarding the question of whether or not state courts have authority under the federal Uniformed Services Former Spouses' Protection Act, 10 U.S.C. § 1408, to enforce an agreed decree of divorce wherein one spouse agrees to pay a former spouse a sum certain which amount is figured upon that amount of gross retired pay that the military retiree is entitled to receive. Nor is there any evidence in the record regarding the question of a state court having authority under the Uniformed Services Former Spouses Protection Act to enforce an agreed decree of divorce wherein one spouse agrees to pay a former spouse a sum certain, based upon the amount that the military retiree is entitled to receive, if the military retiree waives his retired pay to receive a VA disability after a divorce.

Petitioner posed four points of error to the Court of Appeals. The first point of error was the argument that the agreement was void. The second point was overruled because it had not been preserved as error in the trial court. The third and fourth points went to an award of attorney's fees and

were overruled based on the disposition of the first point of error.

In the "Discussion" section of its opinion the Court of Appeals states that in the first point of error,

> Frank argues the portion of the agreement that purportedly awards Lyn fifty percent of all his retirement benefits is void because it attempts to award Lyn one-half of his VA disability pay in violation of the Former Spouses' Protection Act (the Act) and the United States Supreme Court's interpretation of the Act in ***Mansell v. Mansell***, 490 U.S. 581, 109 S. Ct. 2023, 104 L. Ed. 2d 675 (1989).

Pet. App. at 40a.

Petitioner has not included a cite to a location in the record that the questions now sought to be reviewed were raised in the trial court or the Court of Appeals except to the place in the clerk's record wherein Petitioner made his "void" argument. Nor has Petitioner included a cite where the raised questions were addressed by either the trial court or within the opinion by the Court of Appeals. The only reason for the lack of citation is because these questions were neither raised nor addressed in either the trial court or the Court of Appeals. The Court of Appeals correctly decided this case.

II.

THE COURT OF APPEALS HAS NOT DECIDED AN IMPORTANT FEDERAL QUESTION IN CONFLICT WITH A RELEVANT DECISION OF THIS COURT

McCarty v. McCarty, 453 U.S. 210, 101 S. Ct. 2728, 69 L. Ed. 2d 589 (1981) held that a spouse of a former service person did not have the right to be awarded any interest in the service member's retired pay. This case was effectively overruled by 10 U.S.C. § 1408 — Uniformed Services Former Spouses' Protection Act (USFSPA). This act provided the state courts the way to determine what interest the community has in a retired service member's retirement pay, created the definition of disposable retired pay and gave the states the power to treat disposable retired pay as community property while ordering a division of property in a divorce case.

In ***Mansell v. Mansell***, 490 U.S. 581, 109 S. Ct. 2023, 104 L. Ed. 2d 675 (1989), which followed Congress' enactment of the USFSPA, this Court decided the issue of whether the state court can divide and award a portion of retirement pay waived to receive veterans' disability benefits, as part of a division of property in a divorce action. The parties in ***Mansell*** agreed to divide Major Mansell's total retirement pay including that portion of the retirement pay waived so that disability pay could be received. This Court held that the USFSPA does not grant a state trial court the power to treat the actual military retirement pay which has been waived to receive VA disability benefits, as divisible property. This Court's language was very precise and limited. Thus, this Court only decided the issue of whether a state could treat, and thus divide, retirement pay waived to receive

VA disability benefits as marital property. The issue of whether or not a state court could enforce an agreement that referenced the retirement pay amount was not addressed in ***Mansell***.

The ***Mansell*** case is distinguished from this case and thus the Court of Appeals' decision does not conflict with it. In this case, in the decree of divorce entitled "Agreed Final Judgment and Decree of Divorce and Binding Contractual Property Settlement Agreement of the Parties" Petitioner agreed to pay Respondent a certain sum of money as follows:

> a monthly amount of money equal to fifty (50%) per cent of that monthly amount that a retired Master Sergeant, with twenty (20) years' (sic) of service will receive on the date FRANK JOSEPH SEDDIO, JR. shall become entitled for the period beginning on the date of retirement and ending on the death of FRANK JOSEPH SEDDIO, JR.

Pet. App. at 8a.

This language is not the standard language required to divide military retirement pay nor is it a mistaken attempt to divide Frank's disability pay. The parties contemplated their agreement prior to entering into it and went on to provide within the Agreement a section entitled "Contractual Agreements Voluntary, Mutual and Clearly Understood" the following stipulations:

> Petitioner, LYN LARAINE (OTT) SEDDIO, and Respondent, FRANK JOSEPH SEDDIO, JR. each, has been and is, completely informed of the facts relating to the subject matter of these several binding contractual Agreements, herein

contained, and of the rights and liabilities of both Parties;

Each Party, Petitioner, LYN LARAINE (OTT) SEDDIO, and Respondent, FRANK JOSEPH SEDDIO, JR., enters into this Agreement(s) voluntarily and only after receiving the advice of independent Legal Counsel, or having been provided with the opportunity to seek independent advice from independent Legal Counsel;

Each Party, Petitioner, LYN LARAINE (OTT) SEDDIO, and Respondent, FRANK JOSEPH SEDDIO, JR., has given careful, mature and informed thought and consideration to the making of this Agreement(s);

Each Party, Petitioner, LYN LARAINE (OTT) SEDDIO, and Respondent, FRANK JOSEPH SEDDIO, JR., has carefully, intelligently and completely read each and every provision of this Agreement(s), and this "Agreed Final Decree of Divorce and Binding Contractual Property Settlement Agreement", and all of its provisions, herein contained; and;

Each Party, Petitioner, LYN LARAINE (OTT) SEDDIO, and Respondent, FRANK JOSEPH SEDDIO, JR., completely and fully understands, for all purposes, each and every provision of this Agreement(s), both as to the subject matter therein contained and the binding legal effect of all Agreements and Orders herein contained.

Pet. App. at 24a-25a.

Petitioner and Respondent entered into a contractually binding settlement agreement and simply used the amount of military retirement as a benchmark. Additionally, Petitioner was employed full time at Electronic Data Systems, Dallas, Texas at the time of the divorce. Pet. App. at 2a, (CR 3), (RR 32). The parties knew that Petitioner had other resources from which to pay Respondent the amount to which they agreed. ***Mansell*** does not prohibit Petitioner from entering into the Agreement and using the amount that he is entitled to as the means to determine what he would pay Respondent. Petitioner did not have to pay Respondent from the money he received as a result of his waiver. The decision to waive a portion of his disposable retired pay was Petitioner's unilateral decision. The Court of Appeals correctly found as follows:

> The Mansells' agreement expressly divided Gerald's VA disability benefits in contravention of the Act, Frank and Lyn merely contracted to divide a definite amount, irrespective of ancillary or subsequent occurrences such as we have here.

Pet. App. at 42a.

Petitioner ignores the plain factual differences and claims that the Court of Appeals' distinction is a distinction without a real difference in an attempt to transform this case into one that conflicts with ***Mansell***. In order for there to be no difference between the cases, Petitioner would have had to agree to "divide" his "total retirement" with Respondent and not have another assets or means to pay, and not be employed full-time at the time of the divorce or subsequent court action. However, those are not the facts of this case. The Court of Appeals' decision was based on its analysis of facts, and its

application of the ***Mansell*** holding to the facts in this case. This Court's Rule 10 states: "A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Petitioners would like this Court to ignore the clear language of the Court of Appeals' holding as well as Rule 10 in order to have the Writ granted.

Petitioner continues on to create another interpretation of the Court of Appeals' holding which has no basis in the opinion of the Court of Appeals. This "interpretation" and the claims by Petitioner are without a cite to the opinion because it is entirely of Petitioner's creation and thus without a reference to this case or the Court of Appeals. Therefore, this "interpretation" is an illusion, without merit and has no bearing on the consideration of the writ. Pet. 8-9.

The Court of Appeals correctly held that in addition to the foregoing distinctions, based on the particular indemnification clause that was contained with the Agreement that reimbursement, or satisfaction, upon the entry of a judgment against one of the parties arising from the agreement was ensured. Additionally, the indemnification clause does not include a specific source for the amounts due.

The Court of Appeals' decision is a fact specific state law decision, which is not in conflict with decisions of this Court.

III.

THERE IS NO STATE COURT TREND, AND IF THERE WERE, IT WOULD NOT BE AFFECTED IN ANY WAY BY THIS CASE

Petitioner claims that there is a trend of state courts evading the specific language of the USFSPA and the teaching of this Court in ***Mansell***. This claim is totally without foundation. The truth is that the language in the USFSPA is very specific and very limited. This Court in ***Mansell*** held that domestic relation matters are preeminently matters of state law and that Congress rarely intends to displace state authority in this area. ***Mansell***, 490 U.S. at 587, 109 S. Ct. at 2028, quoting ***Hisquierdo v. Hisquierdo***, 439 U.S. 572, 581, 99 S. Ct. 802, 808, 59 L. Ed. 2d 1 (1979). This Court went on to state that it has held that it will not find preemption absent evidence that it is "positively required by direct enactment." In fact in ***Mansell***, this Court held that the language of § 1408(c)(1) is both plain and precise. The USFSPA gives the state courts the power to treat "disposable retired or retainer pay . . . either as property solely of the member or as property of the member and his spouse in accordance with the law of the jurisdiction of such court." § 1408(c)(1). The state courts still have the authority to use the laws of their jurisdiction in the area of domestic relations.

Additionally, within Petitioner's claims he misquotes several things. Petitioner begins the argument by stating that many state courts have "ignored the statutory limitations in the USFSPA and interpreted it to return to the states total authority to divide military retired pay, as in the pre-***McCarty*** era". Pet. at 10. The cite is Gilbert, *A Family Law Practitioner's Road Map to the Uniformed Services Former*

Spouses' Protection Act, 32 Santa Clara L. Rev. 61, 74, 75. (1992). What the article actually states is as follows:

> **Until recently**, many states ignored the statutory mandate that disability pay, which is difficult to obtain, cannot be considered as part of the disposable military retired pay over which state courts hold jurisdiction. . . . The game changed when the United States Supreme Court held in ***Mansell v. Mansell*** that federal law means what it says. In ***Mansell***, the Court noted that the language of the USFSPA is "both precise and limited." The Court held that state courts only have the authority to treat disposable retired pay, as defined by federal law, as material property. **Since receiving the clear message of *Mansell*, courts appear to have complied with the proscription of the USFSPA**.

(Emphasis added).

Petitioner goes on to cite Fenton, *Uniformed Services Former Spouses' Protection Act and Veterans' Disability and Dual Compensation Act Awards*, 1998-FEB Army Law. 31 (1988), as holding the position that many state courts are undeterred in their efforts to thwart any limitations upon their power to divide gross retirement pay. This is simply not a statement contained within the article cited. The article is a brief discussion of ***Abernethy v. Fishkin***, 699 So. 2d 235 (Fla. 1997) and ***In re Marriage of Gaddis***, 191 Ariz. 467, 957 P. 2d 1010 (Ariz. App. 1997), and concludes by stating that the issues concerning the USFSPA remain very state specific. 1998-FEB Army Law. 31, at 33.

Petitioner continues on and begins to recite numerous cases decided in many states. Petitioner begins this recitation with the mention of ***In re Krempin***, 70 Cal. App. 4th 1008, 83 Cal. Rptr. 2d 134 (1999). In fact, Petitioner utilizes quite a bit of the dicta contained within ***In re Krempin***, as the majority of his discussion of the various state court holdings within his petition. Petitioner also cites ***In re Krempin***, for the holding that "if the military retiree waives retired pay to receive disability benefits, the state courts have the equitable power to impose a resulting trust on the money received as disability payments." Pet. at 12. However, this is not a holding of the ***In re Krempin*** court. This language actually comes out of the portion of the ***Krempin*** opinion that is discussing another California case and a commentary written about that case. The ***Krempin*** court discussed a resulting trust but limited it to a narrow set of facts and remanded the case to the trial court to determine if those facts exist.

All of the remaining state court decisions that are cited by Petitioner do in fact take different approaches to the property issues that they are answering. However, that is well within the scope of the authority that is expressly given to them within the USFSPA. Thankfully, divorces are not federal matters. States differ in terms of property ownership theories — equitable, community — as well as inception of title theories. These are not matters that are defined by federal law or ***Mansell.*** In each of the state court cases, the parties' property was divided based upon the individual circumstances and the application of state law. In each of the cases, subsequent to the division of property, one party unilaterally modified the court's order. The state courts are the proper courts to decide these domestic relation matters.

State courts are well within their authority to consider all of the circumstances of the property of the marriage, and divide the property under their jurisdiction's authority and laws pursuant to the USFSPA. This is not a matter for Congress, as Petitioner claims. The state court decisions are simply a reflection of the individual jurisdictions' state laws. Additionally, this decision is not a published opinion and therefore cannot be used as precedent. This Court of Appeals decision will not affect anyone but the parties involved.

IV.

SERVICE MEMBERS ON ACTIVE DUTY ARE NOT AFFECTED BY THE ANALYSIS OF THE COURT OF APPEALS

The analysis and ruling by the Court of Appeals in this case will not in any way affect active duty, military personnel. First, this opinion of the Court of Appeals is not a published opinion. Therefore, the ruling in this case by the appellate court cannot be used, as precedent by any party at any time. Second, the facts in this case and the language in the divorce decree is unique, and thus distinguishable from ***Mansell*** and the analysis by the Court of Appeals recognized that and ruled accordingly.

Additionally, Petitioner simply claims that the "crux" of the opinion of the Court of Appeals and the "other courts" is that on those subsections (a)(4) exclusions that actually exist on the date of the divorce decree are excluded from the state court's division of property upon divorce and that therefore, a member who is divorced while on active duty will be denied the application of subsections

(a) (4)(B) & (C). Pet. at 13. This statement is not supported by any type of reasoning or argument by Petitioner. This is blatantly wrong. The Texas Court of Appeals ruling does not interpret or limit any subsections of the USFSPA. The ruling does not discuss USFSPA sections specifically at all. The Texas Court of Appeals ruling will not affect active service members.

Furthermore, the holdings from the "other courts" do not hold that an active service member will be denied the application of any portion of the USFSPA. The state courts have the authority to render a division of property based on state law by the authority expressly given to them.

To put it simply this argument is either based on the most egregious misunderstanding of the cases, domestic relations' law and the division of military retirement or is simply a huge exaggeration to persuade this Court to grant the petition. The case law cited by Petitioner in no way holds that active military personnel will be denied the application of any subsections of the USFSPA.

V.

THERE IS NO NEED FOR REVIEW BY THIS COURT

As previously discussed at length, the state courts are not disregarding this Court's holding in ***Mansell***. Petitioner also claims that within the articles that he has cited the authors suggest that it would be malpractice for lawyers representing former spouses not to assert these various approaches to evade ***Mansell*** is also without merit. The area of domestic relations' law is very intricate and requires research and education to maintain a working knowledge of

all of the potential pitfalls. The article that Petitioner cites by Sullivan, *Military Pension Division: Crossing the Minefield* 31 Fam.L.Q. 19 (1997), is an article that actually discusses how difficult it is to correctly prepare and negotiate a divorce involving military issues and that a mistake can be easily made. If there is a suggestion concerning malpractice, it is that practitioners need to either research military issues in a divorce or not take the case because a mistake in this area can be easily made. The article does not assert the position that Petitioner claims. Additionally, the article by Block, *Reductions in Disposable Retired Pay Triggered by Receipt of VA Disability Pay: A Basis for Reopening a Judgment of Divorce?* 1995-OCT Army Law 28 (1995), is an article that discusses possible ramifications of the definition of "disposable retired pay" and potential solutions. The articles do not take the position that Petitioner claims.

While there may be various methods that the states have used to divide property in a divorce, this Court has specifically held in both ***Mansell*** and ***Hisquierdo*** in the area of domestic relations law the state courts retain that authority. There is not a trend of state courts evading this Court's teaching or holdings. There is no need for this Court to take up this case.

CONCLUSION

Petitioners have failed to provide a compelling reason for this Court to grant a Writ of Certiorari. The questions sought to be reviewed were not raised in the trial court or the Court of Appeals. The Court of Appeals correctly analyzed the facts in this case. The Court of Appeals has not decided an important federal question in a way that conflicts with relevant decisions of this Court. This case is a fact specific case that will not affect or concern anyone but the parties. The Court of Appeals was correct in its decision. This case does not merit further review.

Respectfully submitted,

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